

To: Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Patterson, Kenneth[Patterson.Kenneth@epa.gov]
From: Bodine, Susan
Sent: Tue 12/5/2017 10:23:47 PM
Subject: FW: Region 1 view re: Centredale Manor appeal

FYI

From: Moraff, Kenneth
Sent: Tuesday, December 5, 2017 5:17 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Kelly, Albert <kelly.albert@epa.gov>; Szaro, Deb <Szaro.Deb@epa.gov>
Subject: Region 1 view re: Centredale Manor appeal

David and Kevin,

Ex. 5 - Attorney Client

Thank you and let us know if any further information from the Region would be helpful.

Ken

To: Fotouhi, David[fotouhi.david@epa.gov]
From: Bodine, Susan
Sent: Thur 11/16/2017 3:03:00 PM
Subject: FW: Emhart Industries Appeal
Emhart DRAFT (11-03-17 CLEAN) Request for Appeal (EPA Letter to DOJ).docx

Per our conversation yesterday.

From: Shiffman, Cari
Sent: Thursday, November 16, 2017 9:35 AM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Miles, Erin <Miles.Erin@epa.gov>
Subject: Emhart Industries Appeal

Susan,

Here is an electronic copy of the draft letter.

Thanks,

Cari Shiffman, Special Assistant

U.S. Environmental Protection Agency

Office of Enforcement and Compliance Assurance

Office: (202) 564-2898 | Mobile: (202) 823-3277

To: Starfield, Lawrence[Starfield.Lawrence@epa.gov]
From: Bodine, Susan
Sent: Thur 10/26/2017 5:33:15 PM
Subject: RE: CERCLA 108b - Draft FAR Comments

Yes, that works

From: Starfield, Lawrence
Sent: Thursday, October 26, 2017 1:32 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: FW: CERCLA 108b - Draft FAR Comments

This is a formulation I worked up with Cyndy – does it address your concern?

Larry

From: Starfield, Lawrence
Sent: Thursday, October 26, 2017 12:13 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>
Cc: DeLeon, Rafael <Deleon.Rafael@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: CERCLA 108b - Draft FAR Comments

How about replacing the bullet and sub-bullet in the memo with the following:

Ex. 5 - Deliberative Process

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Bodine, Susan

Sent: Thursday, October 26, 2017 11:34 AM

To: Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: DeLeon, Rafael <Deleon.Rafael@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Subject: RE: CERCLA 108b - Draft FAR Comments

Ex. 5 - Deliberative Process

From: Mackey, Cyndy

Sent: Thursday, October 26, 2017 11:08 AM

To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Cc: DeLeon, Rafael <Deleon.Rafael@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Subject: RE: CERCLA 108b - Draft FAR Comments

Larry

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

We are in the process of setting up conversations later today with ORCR and OGC to discuss the specific changes that we are requesting and have provided them some draft language.

Cyndy Mackey

Director, Office of Site Remediation Enforcement

EPA-Office of Enforcement and Compliance Assurance (Mail Code-2271A)

1200 Pennsylvania Ave., N.W. (Room-WJC 5206) Washington, DC 20460

202 564-8206 (Direct Line)

202 564-5110 (Office Line)

202 591-6184(Office Cell)

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you

From: Starfield, Lawrence

Sent: Thursday, October 26, 2017 10:15 AM

To: Mackey, Cyndy <Mackey.Cyndy@epa.gov>

Cc: DeLeon, Rafael <Deleon.Rafael@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>;

Traylor, Patrick <traylor.patrick@epa.gov>

Subject: RE: CERCLA 108b - Draft FAR Comments

Cyndy,

One more revision:

Ex. 5 - Deliberative Process

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Mackey, Cyndy

Sent: Thursday, October 26, 2017 10:06 AM

To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: DeLeon, Rafael <Deleon.Rafael@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>

Subject: RE: CERCLA 108b - Draft FAR Comments

Larry

Ex. 5 - Deliberative Process

Thanks.

Cyndy Mackey

Director, Office of Site Remediation Enforcement

EPA-Office of Enforcement and Compliance Assurance (Mail Code-2271A)

1200 Pennsylvania Ave., N.W. (Room-WJC 5206) Washington, DC 20460

202 564-8206 (Direct Line)

202 564-5110 (Office Line)

202 591-6184 (Office Cell)

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you

From: Starfield, Lawrence

Sent: Thursday, October 26, 2017 9:30 AM

To: Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: DeLeon, Rafael <Deleon.Rafael@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>

Subject: RE: CERCLA 108b - Draft FAR Comments

Importance: High

Here are my suggested revisions to the FAR memo; I'd appreciate everyone's review and comments (it may be easier to read in the "No Markup" format under the document "Review" tab).

I'd appreciate any thoughts by later this morning, so that we can get it to OLEM as soon as possible. Also, Cyndy, I think it is worth assigning a couple of people to go through the package and place these language suggestions in the package. My experience is that comments are more likely to be accepted if we make it very easy for the home office to adopt them.

Thanks.

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Mackey, Cyndy
Sent: Wednesday, October 25, 2017 5:12 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: DeLeon, Rafael <Deleon.Rafael@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: FW: CERCLA 108b - Draft FAR Comments

Larry

Attached is a draft set of OECA comments on the CERCLA 108(b) for your signature.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Cyndy Mackey

Director, Office of Site Remediation Enforcement

EPA-Office of Enforcement and Compliance Assurance (Mail Code-2271A)

1200 Pennsylvania Ave., N.W. (Room-WJC 5206) Washington, DC 20460

202 564-8206 (Direct Line)

202 564-5110 (Office Line)

202 591-6184(Office Cell)

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you

To: Brown, Byron[brown.byron@epa.gov]; Noggle, William[Noggle.William@epa.gov]
Cc: Huff, Mark J[huff.markj@epa.gov]; Sasseville, Sonya[Sasseville.Sonya@epa.gov]; Foster, Barbara[Foster.Barbara@epa.gov]; Palmer, Scott[Palmer.Scott@epa.gov]; Malcolm, Alyssa[Malcolm.Alyssa@epa.gov]
From: Bodine, Susan
Sent: Fri 11/24/2017 8:44:45 PM
Subject: RE: 108(b) final rule 2nd version - for interagency distribution

I had the same difficulty. Below is further information from OLEM.

Would it be possible to ask someone to search for the 27 sites in these databases? (Knowing that we don't have information for all 27).

It could go into the new Background Document.

From: Malcolm, Alyssa
Sent: Tuesday, November 21, 2017 1:58 PM
To: Noggle, William <Noggle.William@epa.gov>
Cc: Huff, Mark J <huff.markj@epa.gov>; Birchfield, Norman <Birchfield.Norman@epa.gov>; Shimeles, Taetaye <Shimeles.Taetaye@epa.gov>; Krahe, Joseph <Krahe.Joseph@epa.gov>; Pease, Michael <pease.michael@epa.gov>; Benware, Richard <Benware.Richard@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Palmer, Scott <Palmer.Scott@epa.gov>
Subject: RE: 108(b) final rule 2nd version - for interagency distribution

Hi Bill,

ERAS has double checked the databases hosted on the FTP site on multiple computers and they appear to be working correctly. All data collected are included in the base table for each database (which are specifically named in the "Information for Accessing the CERCLA 108(b) FTP Site" sent previously).

Specific to Susan's request:

- EPA expenditure data is located in the **D_Site Exp.accdb** database. The base table is “**00015 Tot Exp Conv.**”
- Settlement data is located in the **cerclis_historical_sites_41612.mdb** database. The base table is “**Settlements**”.
- Response cost data is located in the **E_ROD Costs.accdb** database. The base table is “**000003 Final 01**”.

Please note that these databases were developed to support the Formula work, and therefore may not line up with the 27 sites listed in the “Releases from Hardrock Mining Facilities” memorandum.

If there are remaining database access issues, please let ERAS know.

Alyssa Malcolm
Economist, Economics and Risk Analysis Staff
Office of Resource Conservation and Recovery
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Phone: (703) 308-8610

From: Brown, Byron
Sent: Friday, November 24, 2017 3:16 PM
To: Noggle, William <Noggle.William@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Cc: Huff, Mark J <huff.markj@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Palmer, Scott <Palmer.Scott@epa.gov>
Subject: RE: 108(b) final rule 2nd version - for interagency distribution

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

I could not find that information in the record (I also could not navigate through the FTP site for which you sent the link, so apologize if it's there I just cannot find it).

From: Noggle, William

Sent: Monday, November 20, 2017 1:48 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>

Cc: Huff, Mark J <huff.markj@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>;

Foster, Barbara <Foster.Barbara@epa.gov>; Palmer, Scott <Palmer.Scott@epa.gov>

Subject: FW: 108(b) final rule 2nd version - for interagency distribution

Susan, Byron,

Here is the FTP site: **Ex. 6 - Personal Privacy** (supplied by Mark). Also attached is a document with info on accessing the site. Please let us know if there is anything specific we can dig up for you.

Thanks,

Bill

202-566-1306

From: Huff, Mark J

Sent: Monday, November 20, 2017 1:32 PM

To: Foster, Barbara <Foster.Barbara@epa.gov>

Cc: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Palmer, Scott <Palmer.Scott@epa.gov>

Subject: RE: 108(b) final rule 2nd version - for interagency distribution

Here's the link and accompanying document that explains all the files contained on the FTP site. We can also send along actual attachments if needed. Just let us know.

Ex. 6 - Personal Privacy

From: Foster, Barbara
Sent: Monday, November 20, 2017 12:54 PM
To: Huff, Mark J <huff.markj@epa.gov>
Cc: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Palmer, Scott <Palmer.Scott@epa.gov>
Subject: FW: 108(b) final rule 2nd version - for interagency distribution

Mark,

Can someone in your group answer Susan's and Byron's question about data cited in the formula background document?

Thanks

From: Noggle, William
Sent: Monday, November 20, 2017 12:48 PM
To: Foster, Barbara <Foster.Barbara@epa.gov>; Pease, Michael <pease.michael@epa.gov>
Subject: FW: 108(b) final rule 2nd version - for interagency distribution

Barbara, Mike,

See Susan's request below. I tried to search through your 2,335 supporting docs in the docket, but my search has been running for 10 min with no end in sight. Could you please provide Susan and Byron with the Access database and the FTP link.

Thanks,

Bill

From: Bodine, Susan
Sent: Monday, November 20, 2017 12:33 PM
To: Noggle, William <Noggle.William@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: RE: 108(b) final rule 2nd version - for interagency distribution

Bill,

Can you send to Byron and myself the ftp link and the Microsoft Access file identified in the CERCLA 108(b) Financial Responsibility Formula For Hardrock Mining Facilities, Background Document, Sept. 19, 2016 (EPA-HQ-SFUND-2015-0781-0500)? See excerpt copied below:

“From the sources above, CERCLIS/IFMS data were combined into a Microsoft Access file to

summarize the Fund expenditures incurred at each site to date. This file includes data on the type

of expenditure (broadly speaking, construction versus non-construction) and the source of funds

(e.g., special account). It also provides information regarding the number of operable units at

each site, type of action, site lead status, the status of the construction activities at the site, and

the year of construction completion (if appropriate). A separate Microsoft Access file was

compiled for each site’s ROD data. These data provide a dollar estimate for each remedial action

chosen at a site. **Appendix A** lists all tables and fields within each Microsoft Access file and

identifies the tables and fields that were used in the analysis, as well as presents more detailed

data processing steps. A link to an FTP site containing these files is provided in the docket.”

Thank you,

Susan

From: Noggle, William

Sent: Friday, November 17, 2017 6:45 PM

To: DeBruhl, Brandon F. EOP/OMB <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Laity, Jim A. EOP/OMB <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Jones, Danielle Y. EOP/OMB <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Rojas, Pablo EOP/OMB (Intern)

Cc: Sasseville, Sonya <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Foster, Barbara <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Johnson, Barnes <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Brown, Byron <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Fotouhi, David <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Michaud, John <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Stachowiak, Robert <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Darwin, Veronica <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Lewis, Jen <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Bodine, Susan <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Breen, Barry <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Hostage, Barbara <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Coglian, Gerain <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Hilosky, Nick <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Brooks, Becky <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Mattick, Richard <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>; Farber, Glenn <[REDACTED] Ex. 6 - Personal Privacy [REDACTED]>
Subject: 108(b) final rule 2nd version - for interagency distribution

Pablo,

Attached are the

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Thanks,

Bill

202-566-1306

To: Brown, Byron[brown.byron@epa.gov]
From: Bodine, Susan
Sent: Tue 11/28/2017 11:09:19 PM
Subject: FW: CERCLA 108b hardrock mining rule - OIRA comments
REDLINE 108b Final Rule Nov 27 2017 jl.docx

-----Original Message-----

From: Rojas, Pablo EOP/OMB (Intern) [mailto:**Ex. 6 - Personal Privacy**]
Sent: Tuesday, November 28, 2017 6:07 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Laity, Jim A. EOP/OMB <**Ex. 6 - Personal Privacy**>
Subject: CERCLA 108b hardrock mining rule - OIRA comments

Hi Susan -

Please see attached **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

Thanks,
Pablo

To: Brown, Byron[brown.byron@epa.gov]; Noggle, William[Noggle.William@epa.gov]; Sasseville, Sonya[Sasseville.Sonya@epa.gov]; Foster, Barbara[Foster.Barbara@epa.gov]; Johnson, Barnes[Johnson.Barnes@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Michaud, John[Michaud.John@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]; Lewis, Jen[Lewis.Jen@epa.gov]
Cc: Breen, Barry[Breen.Barry@epa.gov]; Hostage, Barbara[Hostage.Barbara@epa.gov]; Cogliano, Gerain[Cogliano.Gerain@epa.gov]; Hilosky, Nick[Hilosky.Nick@epa.gov]; Brooks, Becky[Brooks.Becky@epa.gov]; Mattick, Richard[Mattick.Richard@epa.gov]; Farber, Glenn[Farber.Glenn@epa.gov]
From: Bodine, Susan
Sent: Fri 11/17/2017 7:03:48 PM
Subject: RE: EDITS REQUESTED BY 2PM - 108(b) Final Rule - 2nd version to OMB
CLEAN EO12866 FinancialResponsibilityRequirementsHardrockMiningIndustrydocx spb edits.docx

Ex. 5 - Deliberative Process

From: Brown, Byron
Sent: Friday, November 17, 2017 2:01 PM
To: Noggle, William <Noggle.William@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>
Subject: RE: EDITS REQUESTED BY 2PM - 108(b) Final Rule - 2nd version to OMB

Ex. 5 - Deliberative Process

From: Noggle, William
Sent: Friday, November 17, 2017 1:17 PM
To: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara

<Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>

Cc: Breen, Barry <Breen.Barry@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: EDITS REQUESTED BY 2PM - 108(b) Final Rule - 2nd version to OMB

Just a reminder to please send any remaining edits on the final rule by 2pm today. This will allow Barbara's team to (hopefully) incorporate changes prior to COB, which will in turn allow OMB to distribute to interagency reviewers prior to COB today. Thank you.

From: Noggle, William

Sent: Friday, November 17, 2017 8:08 AM

To: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>

Cc: Breen, Barry <Breen.Barry@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: 108(b) Final Rule - 2nd version to OMB

To all –

Attached are the clean and redline versions of the 108(b) Hardrock Mining Final Rule, which addresses the first round of interagency comments. Please review and send edits/comments to Barbara Foster, Rob, and me before 2pm today. Also, below is the tentative schedule for the next two weeks.

- Nov 16 (Friday):

o EPA delivers redline version to OMB;

- o OMB distributes redline version to interagency reviewer with instructions to supply 2nd round comments by Tuesday (Nov 21)

- Nov 21 (Tuesday):

- o Interagency meeting at 1pm;

- o 2nd round comments are due either before the meeting or supplied during the meeting

- Nov 27 (Monday):

- o EPA delivers redline version to OMB on Monday morning;

- o OMB distributes redline version to interagency reviewer with instructions to supply 3rd round comments by Tuesday (Nov 28)

- Nov 28 (Tuesday):

- o Interagency meeting at 3pm;

- o 3rd round comments are due either before the meeting or supplied during the meeting

- Nov 29 (Wednesday):

- o EPA delivers redline version to OMB by COB

- Nov 30 (Thursday):

- o Wrap up meeting at 10am

- o EPA uploads into ROCIS: OMB clears

- Dec 1 (Friday):

- o Signature

Thanks,

Bill

202-566-1306

To: Brown, Byron[brown.byron@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Michaud, John[Michaud.John@epa.gov]
From: Bodine, Susan
Sent: Fri 11/17/2017 6:32:33 PM
Subject: Subpart B insert
Part IV Subpart B.docx

Ex. 5 - Attorney Client

To: Fotouhi, David[fotouhi.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Michaud, John[Michaud.John@epa.gov]
From: Bodine, Susan
Sent: Fri 11/17/2017 5:09:01 PM
Subject: RE: 108(b) Final Rule - 2nd version to OMB
Sections 1-IV(B) on top of SBA edits.docx

Use this one. I had a version control issue.

From: Bodine, Susan
Sent: Friday, November 17, 2017 11:55 AM
To: Fotouhi, David <fotouhi.david@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Michaud, John <Michaud.John@epa.gov>
Subject: FW: 108(b) Final Rule - 2nd version to OMB
Importance: High

Ex. 5 - Deliberative Process

I think two things are particularly important:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Deliberative Process

From: Brown, Byron

Sent: Friday, November 17, 2017 9:53 AM

To: Noggle, William <Noggle.William@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>

Cc: Breen, Barry <Breen.Barry@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: RE: 108(b) Final Rule - 2nd version to OMB

Thanks. I am adding Susan Bodine to the distribution.

From: Noggle, William

Sent: Friday, November 17, 2017 8:08 AM

To: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>

Cc: Breen, Barry <Breen.Barry@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: 108(b) Final Rule - 2nd version to OMB

To all –

Attached are the clean and redline versions of the 108(b) Hardrock Mining Final Rule, which addresses the first round of interagency comments. Please review and send edits/comments to Barbara Foster, Rob, and me before 2pm today. Also, below is the tentative schedule for the

next two weeks.

- Nov 16 (Friday):
 - o EPA delivers redline version to OMB;
 - o OMB distributes redline version to interagency reviewer with instructions to supply 2nd round comments by Tuesday (Nov 21)
- Nov 21 (Tuesday):
 - o Interagency meeting at 1pm;
 - o 2nd round comments are due either before the meeting or supplied during the meeting
- Nov 27 (Monday):
 - o EPA delivers redline version to OMB on Monday morning;
 - o OMB distributes redline version to interagency reviewer with instructions to supply 3rd round comments by Tuesday (Nov 28)
- Nov 28 (Tuesday):
 - o Interagency meeting at 3pm;
 - o 3rd round comments are due either before the meeting or supplied during the meeting
- Nov 29 (Wednesday):
 - o EPA delivers redline version to OMB by COB
- Nov 30 (Thursday):
 - o Wrap up meeting at 10am
 - o EPA uploads into ROCIS: OMB clears
- Dec 1 (Friday):
 - o Signature

Thanks,

Bill

202-566-1306

To: Fotouhi, David[fotouhi.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Michaud, John[Michaud.John@epa.gov]
From: Bodine, Susan
Sent: Fri 11/17/2017 4:55:18 PM
Subject: FW: 108(b) Final Rule - 2nd version to OMB
Sections 1-IV(B) on top of SBA edits.docx

Ex. 5 - Deliberative Process

I think two things are particularly important:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Deliberative Process

From: Brown, Byron

Sent: Friday, November 17, 2017 9:53 AM

To: Noggle, William <Noggle.William@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>

Cc: Breen, Barry <Breen.Barry@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>;

Farber, Glenn <Farber.Glenn@epa.gov>

Subject: RE: 108(b) Final Rule - 2nd version to OMB

Thanks. I am adding Susan Bodine to the distribution.

From: Noggle, William

Sent: Friday, November 17, 2017 8:08 AM

To: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: 108(b) Final Rule - 2nd version to OMB

To all –

Attached are the clean and redline versions of the 108(b) Hardrock Mining Final Rule, which addresses the first round of interagency comments. Please review and send edits/comments to Barbara Foster, Rob, and me before 2pm today. Also, below is the tentative schedule for the next two weeks.

- Nov 16 (Friday):

- o EPA delivers redline version to OMB;
- o OMB distributes redline version to interagency reviewer with instructions to supply 2nd round comments by Tuesday (Nov 21)

- Nov 21 (Tuesday):

- o Interagency meeting at 1pm;
- o 2nd round comments are due either before the meeting or supplied during the meeting

- Nov 27 (Monday):
 - o EPA delivers redline version to OMB on Monday morning;
 - o OMB distributes redline version to interagency reviewer with instructions to supply 3rd round comments by Tuesday (Nov 28)
- Nov 28 (Tuesday):
 - o Interagency meeting at 3pm;
 - o 3rd round comments are due either before the meeting or supplied during the meeting
- Nov 29 (Wednesday):
 - o EPA delivers redline version to OMB by COB
- Nov 30 (Thursday):
 - o Wrap up meeting at 10am
 - o EPA uploads into ROCIS: OMB clears
- Dec 1 (Friday):
 - o Signature

Thanks,

Bill

202-566-1306

Cc: Fotouhi, David[Fotouhi.David@epa.gov]

To: Brown, Byron[brown.byron@epa.gov]

From: Bodine, Susan

Sent: Sun 11/5/2017 9:44:55 PM

Subject: 108(b)

EO12866 FinancialResponsibilityRequirementsHardrockMiningIndustry RIN2050-AG61 FinalRule 2017

Nov 6 edits .docx

ATT00001.htm

Further edits

Let's discuss

To: Brown, Byron[brown.byron@epa.gov]
From: Bodine, Susan
Sent: Tue 11/28/2017 10:11:28 PM
Subject: FW: 108(b) final rule 2nd version - for interagency distribution

From: Bodine, Susan
Sent: Tuesday, November 21, 2017 9:23 AM
To: Noggle, William <Noggle.William@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: RE: 108(b) final rule 2nd version - for interagency distribution

Thanks Bill

I am looking for response costs, EPA expenditures, and settlement cost recoveries for the 27 sites listed in the Releases Report.

For some of them, the Response Costs can be found on Appendix B of CERCLA 108(b) Financial Responsibility Formula For Hardrock Mining Facilities, Background Document, Sept. 19, 2016 (EPA-HQ-2015-0781-0500).

Presumably the EPA expenditures and the settlements are in the documents in the FTP site – but I am having a hard time opening them. I get an error message “not a valid path”

Susan

From: Noggle, William
Sent: Monday, November 20, 2017 1:48 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Cc: Huff, Mark J <huff.markj@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Palmer, Scott <Palmer.Scott@epa.gov>

Subject: FW: 108(b) final rule 2nd version - for interagency distribution

Susan, Byron,

Here is the FTP site **Ex. 6 - Personal Privacy** (supplied by Mark). Also attached is a document with info on accessing the site. Please let us know if there is anything specific we can dig up for you.

Thanks,

Bill

202-566-1306

From: Huff, Mark J

Sent: Monday, November 20, 2017 1:32 PM

To: Foster, Barbara <Foster.Barbara@epa.gov>

Cc: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Palmer, Scott <Palmer.Scott@epa.gov>

Subject: RE: 108(b) final rule 2nd version - for interagency distribution

Here's the link and accompanying document that explains all the files contained on the FTP site. We can also send along actual attachments if needed. Just let us know.

Ex. 6 - Personal Privacy

From: Foster, Barbara

Sent: Monday, November 20, 2017 12:54 PM

To: Huff, Mark J <huff.markj@epa.gov>

Cc: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Palmer, Scott <Palmer.Scott@epa.gov>

Subject: FW: 108(b) final rule 2nd version - for interagency distribution

Mark,

Can someone in your group answer Susan's and Byron's question about data cited in the formula background document?

Thanks

From: Noggle, William

Sent: Monday, November 20, 2017 12:48 PM

To: Foster, Barbara <Foster.Barbara@epa.gov>; Pease, Michael <pease.michael@epa.gov>

Subject: FW: 108(b) final rule 2nd version - for interagency distribution

Barbara, Mike,

See Susan's request below. I tried to search through your 2,335 supporting docs in the docket, but my search has been running for 10 min with no end in sight. Could you please provide Susan and Byron with the Access database and the FTP link.

Thanks,

Bill

From: Bodine, Susan

Sent: Monday, November 20, 2017 12:33 PM

To: Noggle, William <Noggle.William@epa.gov>

Cc: Brown, Byron <brown.byron@epa.gov>

Subject: RE: 108(b) final rule 2nd version - for interagency distribution

Bill,

Can you send to Byron and myself the ftp link and the Microsoft Access file identified in the CERCLA 108(b) Financial Responsibility Formula For Hardrock Mining Facilities, Background Document, Sept. 19, 2016 (EPA-HQ-SFUND-2015-0781-0500)? See excerpt copied below:

“From the sources above, CERCLIS/IFMS data were combined into a Microsoft Access file to

summarize the Fund expenditures incurred at each site to date. This file includes data on the type

of expenditure (broadly speaking, construction versus non-construction) and the source of funds

(e.g., special account). It also provides information regarding the number of operable units at

each site, type of action, site lead status, the status of the construction activities at the site, and

the year of construction completion (if appropriate). A separate Microsoft Access file was

compiled for each site’s ROD data. These data provide a dollar estimate for each remedial action

chosen at a site. **Appendix A** lists all tables and fields within each Microsoft Access file and

identifies the tables and fields that were used in the analysis, as well as presents more detailed

data processing steps. A link to an FTP site containing these files is provided in the docket.”

Thank you,

Susan

From: Noggle, William

Sent: Friday, November 17, 2017 6:45 PM

To: DeBruhl, Brandon F. EOP/OMB <Ex. 6 - Personal Privacy>; Laity, Jim A.

EOP/OMB <Ex. 6 - Personal Privacy>; Jones, Danielle Y. EOP/OMB

<Ex. 6 - Personal Privacy>; Rojas, Pablo EOP/OMB (Intern)

Cc: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara

<Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron

<brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John

<Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin,

Veronica <darwin.veronica@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Bodine, Susan

<bodine.susan@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Hostage, Barbara

<Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hilosky, Nick

<Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Mattick, Richard

<Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: 108(b) final rule 2nd version - for interagency distribution

Pablo,

Attached are the

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process Those changes should be included in our next redline version (planned for delivery on Nov 27th).

Thanks,

Bill

202-566-1306

To: Ex. 6 - Personal Privacy (sender's personal email address)
From: Bodine, Susan
Sent: Sun 11/5/2017 7:18:26 PM
Subject: Fwd: For OMB review: 108(b) Hardrock Mining Rule
EO12866 FinancialResponsibilityRequirementsHardrockMiningIndustry RIN2050-
AG61_FinalRule_2017Nov1.docx
[ATT00001.htm](#)

Sent from my iPad

Begin forwarded message:

From: "Breen, Barry" <Breen.Barry@epa.gov>
Date: November 1, 2017 at 7:19:01 PM EDT
To: "Brown, Byron" <brown.byron@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Fotouhi, David" <Fotouhi.David@epa.gov>
Subject: Fwd: For OMB review: 108(b) Hardrock Mining Rule

Again, with better formatting

Begin forwarded message:

From: "Cogliano, Gerain" <Cogliano.Gerain@epa.gov>
Date: November 1, 2017 at 7:09:50 PM EDT
To: "Owens, Nicole" <Owens.Nicole@epa.gov>, "Jutras, Nathaniel" <Jutras.Nathaniel@epa.gov>
Cc: "Nickerson, William" <Nickerson.William@epa.gov>, "Farber, Glenn" <Farber.Glenn@epa.gov>, "Hostage, Barbara" <Hostage.Barbara@epa.gov>, "Mattick, Richard" <Mattick.Richard@epa.gov>, "Noggle, William" <Noggle.William@epa.gov>, "Foster, Barbara" <Foster.Barbara@epa.gov>, "Sasseville, Sonya" <Sasseville.Sonya@epa.gov>, ORCR IO <ORCR_IO@epa.gov>, "Breen, Barry" <Breen.Barry@epa.gov>, "Hilosky, Nick" <Hilosky.Nick@epa.gov>
Subject: Fw: For OMB review: 108(b) Hardrock Mining Rule

Here's a version with the preferred headers and file name for submittal to OMB, as well as the preferred page numbering.

From: Cogliano, Gerain
Sent: Wednesday, November 1, 2017 6:53 PM
To: Owens, Nicole; Jutras, Nathaniel
Cc: Nickerson, William; Farber, Glenn; Breen, Barry; Hostage, Barbara; ORCR IO; Sasseville, Sonya;

Foster, Stiven; Mattick, Richard; Noggle, William

Subject: For OMB review: 108(b) Hardrock Mining Rule

Nicole and Nate,

The OMB review draft of the hardrock mining final rule (SAN 5350.1) is attached.

Thanks!

Gerain

To: DeLeon, Rafael[DeLeon.Rafael@epa.gov]
Cc: Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]
From: Bodine, Susan
Sent: Fri 10/27/2017 1:25:49 AM
Subject: Re: 108(b) FAR

I spoke to David Fotouhi .

Ex. 5 - Attorney Client

Sent from my iPhone

On Oct 26, 2017, at 9:22 PM, DeLeon, Rafael <DeLeon.Rafael@epa.gov> wrote:

Susan

My apologies. Larry has asked that we include you in cercla matters and In my haste I neglected to include you. I'll do better! Here is the latest.

Sent from my iPhone

Begin forwarded message:

From: "DeLeon, Rafael" <DeLeon.Rafael@epa.gov>
Date: October 26, 2017 at 6:41:27 PM EDT
To: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Cc: "Mackey, Cyndy" <Mackey.Cyndy@epa.gov>, "Patterson, Kenneth" <Patterson.Kenneth@epa.gov>, Bruce Kulpan <Kulpan.Bruce@epa.gov>, "Luzecky, Hollis" <Luzecky.Hollis@epa.gov>
Subject: 108(b) FAR

Larry

We reconvened with ORCR at 5pm to continue our discussion on the comments we submitted to them. Cyndy joined us.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Attached please find a Redline FAR which includes language OECA negotiated with ORCR and OGC; ORCR summary paragraph and footnote language; and highlights language concerning minimal risk under 108(b). Please note the following color codes in the attached document:

Red Text – Language OECA negotiated with ORCR and OGC this morning.

Blue Text – ORCR summary paragraph and footnote.

Yellow Highlight – Language concerning minimal risk under 108(b).

Thank you Bruce for your work on this...much appreciated.

Rafael DeLeon, Esq.

Deputy Director

EPA-Office of Enforcement and Compliance Assurance

Office of Site Remediation Enforcement (Mail Code-2271A)

1200 Pennsylvania Ave., N.W. (Room-WJC 5206)

Washington, DC 20460

202 564-5110 (Office Line)

202 564-4899 (Direct Line)

202 302-2761 (Office Cell)

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

<CERCLA Hardrock Mining Final Action FAR doc Oct-20-2017 .BK.DOCX>

To: Noggle, William[Noggle.William@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Johnson, Barnes[Johnson.Barnes@epa.gov]; Sasseville, Sonya[Sasseville.Sonya@epa.gov]; Foster, Barbara[Foster.Barbara@epa.gov]; Mattick, Richard[Mattick.Richard@epa.gov]; Cogliano, Gerain[Cogliano.Gerain@epa.gov]; Hostage, Barbara[Hostage.Barbara@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Lewis, Jen[Lewis.Jen@epa.gov]; Michaud, John[Michaud.John@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Farber, Glenn[Farber.Glenn@epa.gov]
From: Bodine, Susan
Sent: Mon 11/27/2017 2:00:45 PM
Subject: RE: Reminder - comments due this morning - 108(b) - Draft final rule
Final Action Federal Register Notice 39 CLEAN.DOCX spb edits.DOCX

Ex. 5 - Deliberative Process

From: Noggle, William
Sent: Monday, November 27, 2017 8:49 AM
To: Brown, Byron <brown.byron@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>
Subject: Reminder - comments due this morning - 108(b) - Draft final rule

To all –

If you intend to comment on the final rule, and have not yet provided those comments, please let Barbara, Rob, and me know. We need all comments this morning.

Thanks,

Bill

202-566-1306

From: Noggle, William
Sent: Friday, November 24, 2017 10:00 AM

To: Brown, Byron <brown.byron@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>
Subject: 108(b) - Draft final rule for review

To all –

Attached is the clean version and redline version of the final rule (showing changes from the 2nd round of interagency comments). Please review and send edits/comments to Barbara, Rob, and me NLT 9am Monday morning (but preferably by COB today).

-

Also, the separate case studies document will be distributed later today.

Thanks,
Bill

202-566-1306

From: Noggle, William

Sent: Wednesday, November 22, 2017 9:25 AM

To: Brown, Byron <brown.byron@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>
Subject: FW: 108(b) - 2nd round comments and immediate next steps

To all –

Attached are all the 2nd round comments (now including Jim Laity's comments). Here is the

proposed schedule to deliver the next draft to OMB by noon on Monday:

- By Friday morning, Barbara and Rob will incorporate changes addressing 2nd round comments into the rule, and they will separate the case studies into a standalone document (I'll distribute to this group).
- NEED all EPA people to review the draft rule and send comments to Barbara, Rob, and me NLT 9am Monday morning (but preferably by COB on Friday).
- Barbara and Rob will address all EPA edits/comments by noon on Monday morning.

Byron, Veronica,

OMB will still want to review the case studies, so the plan is to send the next draft of the case studies along with the rule by noon on Monday. Barbara should be able to get you a standalone doc by Friday morning, but if you would like Barbara et al to review, could you send us (Barbara, Rob, me) your updated case studies by 9am Friday morning?

Thanks,

Bill

202-566-1306

From: Noggle, William

Sent: Tuesday, November 21, 2017 12:28 PM

To: Brown, Byron <brown.byron@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: 108(b) - 2nd round comments

To all –

Attached are the 2nd round comments we've received thus far. The purpose of the 1pm call today is to gather DOJ's 2nd round comments, which they won't send in writing.

Separately, at the staff level (internally), we discussed moving the case studies from the final rule into a standalone supporting document. Information similar to that in our case studies would typically be provided in supporting documents, and with the short amount of time remaining for editing and reviewing the rule, we feel it would be more manageable to separate the rule and case studies. I believe OGC staff is ok with this approach. Please let me know if you have any thoughts on moving the case studies to a standalone document. If everyone is ok with this approach, then we can raise at the 1pm meeting with OMB and DOJ.

Thanks,

Bill

202-566-1306

To: Brown, Byron[brown.byron@epa.gov]
From: Bodine, Susan
Sent: Tue 10/24/2017 10:31:46 PM
Subject: RE: cercla 108

Sorry to bother you.

I found it on Heller's website:

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt:

We greatly appreciate the extension of time for stakeholders to comment on the U.S. Environmental Protection Agency's (EPA) proposed rule, "Financial Responsibility Requirements Under CERCLA 108(b) for Classes of Facilities in the Hardrock Mining Industry," which was published in the Federal Register on January 11, 2017 (82 Fed. Reg. 3388). This extension was necessary to allow stakeholders a meaningful opportunity to review and comment on the many complex issues raised by that proposal.

In this letter, we focus on just one issue: the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 108(b) financial responsibility rule proposed by the prior administration relies on a misinterpretation of the statute. As a result, that proposal is unnecessary and duplicative and exceeds EPA's authority under the law.

Section 108(b) of CERCLA is narrowly focused on the risk that the Superfund Trust Fund would have to pay for the costs of responding to releases associated with the management of hazardous substances by high-risk classes of facilities. The statute states that any financial responsibility requirements promulgated under this section must be "consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances." 42 U.S.C. § 9608(b)(1). This authority requires a two-part analysis. First, because all references to risk in CERCLA section 108(b) are in the present tense, any financial responsibility requirements imposed under that section must be consistent with the risk posed by the current management of hazardous substances. Second, if there is any current risk, any financial responsibility requirements must be tailored to address only the degree and duration of any current risk, prohibiting duplicative financial assurance requirements.

The rule proposed by the prior administration fails to follow these statutory directives. It improperly relies on legacy contamination and activities that predate modern environmental regulation to claim there are risks associated with the production, transportation, treatment, storage, or disposal of hazardous substances by the hardrock mining industry. Legacy contamination is not the risk that Congress directed EPA to address under section 108(b) and information about historic mining practices does not form a record basis for a rule under that section. The analysis put forth by the prior administration also ignores the numerous state and federal financial assurance programs that address any risk that may exist. As a result, the proposed rule fails to tailor financial assurance “consistent with the degree and duration of risk” as required by section 108(b), contrary to the direction of Congress.

As a result of its erroneous interpretation of the statute, the prior administration has proposed a rule that would unlawfully impose duplicative financial assurance requirements. Section 108(b) expressly states that CERCLA financial assurance is “for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law.” The report of the Senate Committee on Environment and Public Works on S. 1480 in the 96th Congress makes it clear that this language is intended to limit CERCLA financial responsibility requirements to facilities that are not covered by Resource Conservation and Recovery Act financial responsibility or other federal financial responsibility requirements. According to the committee:

The bill requires also that facilities maintain evidence of financial responsibility consistent with the degree and duration of risks associated with the production, transportation, treatment, storage, and disposal of hazardous substances. These requirements are in addition to the financial responsibility requirements promulgated under the authority of section 3004(6) of the Solid Waste Disposal Act. It is not the intention of the Committee that operators of facilities covered by section 3004(6) of that Act be subject to two financial responsibility requirements for the same dangers. S. Rept. 96-848 (2d Sess, 96th Cong.), at 92.

The committee report further states that the purpose of this provision is “to extend financial responsibility requirements to facilities and transporters who are not now covered by any requirements under section 3004(6).” Id. (emphasis added). If the Administrator promulgates financial responsibility requirements applicable to a class of facilities, Congress also ensured that duplicative requirements are not later created under state law. The statute preempts state financial responsibility requirements on facilities that are covered by financial responsibility under CERCLA. 42 U.S.C. § 9614(d).

Incredibly, the prior administration interprets CERCLA to authorize the very duplicative requirements that the Senate Environment and Public Works Committee expressly disapproved. This interpretation must be rejected.

Finally, even if EPA could lawfully ignore the plain language of the statute, rely on risks from legacy contamination, and ignore the protection provided by existing financial responsibility requirements, the analysis put forth by the prior administration still does not support a finding that there is a significant financial risk to the Superfund Trust Fund to be addressed under CERCLA. The past administration determined that its proposed regulation will reduce

expenditures from the Superfund Trust Fund for hardrock mining sites by only \$527 million over 34 years, or an average of \$15.5 million a year. Fifteen million dollars a year is not a significant risk to the Trust Fund and does not justify the imposition of financial assurance requirements that EPA estimates will cost \$171 million a year. It is our understanding analyses conducted by affected industries estimate the cost of this new federal program to be several orders of magnitude higher.

The cost of compliance with this unlawful and duplicative federal program will discourage domestic mineral production and stymie future investment and development opportunities, leading to greater import reliance for metals and minerals, and putting the United States domestic manufacturing, energy, and national security sectors at a major disadvantage. Furthermore, this rule will have substantial adverse impacts to local communities who depend on the high-paying family-wage jobs and tax revenues supported by the industry.

We understand that EPA is currently under a court order to finalize a rule by December 1, 2017. However, the level of financial responsibility requirements under CERCLA section 108(b) is the level “which the President in his discretion believes is appropriate.” 42 U.S.C. § 9608(b)(2) (emphasis added). After reviewing the statute, the administrative record, and the comments received during the comment period, it is our hope that you will conclude, as we have, that this rulemaking is unlawful and duplicative.

Thank you for your consideration and please do not hesitate to contact our offices if we can be of further assistance.

From: Brown, Byron
Sent: Tuesday, October 24, 2017 6:30 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: Re: cercla 108

I cannot find it via my iPhone but will look for it tonight when I get home and
can log into email through the laptop.

Ex. 6 - Personal Privacy

Sent from my iPhone

On Oct 24, 2017, at 3:24 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

I can't find the EPW letter in the docket. Can you send me a copy?

To: Fotouhi, David[fotouhi.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]
From: Bodine, Susan
Sent: Sat 10/28/2017 6:23:18 PM
Subject: RE: 108(b)
Final Action Federal Register Notice rev 10-28 clean.docx
Final Action Federal Register Notice rev 10-28 redline.docx

Resending

I attached too many docs and my prior email is stuck in my outbox. Attached are a redline and clean copy of my comments on the 108(b) rule. These are not OECA comments

From: Fotouhi, David
Sent: Thursday, October 26, 2017 6:41 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: FW: 108(b)

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Michaud, John
Sent: Wednesday, October 25, 2017 8:44 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>
Subject: RE: 108(b)

David -- Here is the FAR version of the 108(b) package.

Thanks.

John R Michaud
Associate General Counsel
Solid Waste and Emergency Response Law Office
202-564-5518
michaud.john@epa.gov

From: Fotouhi, David
Sent: Tuesday, October 24, 2017 6:09 PM
To: Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>
Subject: 108(b)

I was told that the rule package is going through to final agency review now. Could you send me the most-recent version? Thanks.

David Fotouhi

Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

Tel: +1 202.564.1976

fotouhi.david@epa.gov

To: Brown, Byron[brown.byron@epa.gov]
Cc: Fotouhi, David[Fotouhi.David@epa.gov]
From: Bodine, Susan
Sent: Mon 11/6/2017 8:38:04 PM
Subject: Re: 108(b)

Good

Sent from my iPhone

On Nov 6, 2017, at 3:20 PM, Brown, Byron <brown.byron@epa.gov> wrote:

Susan – I've been listening in on the call OLEM is having with OMB and other agencies to discuss the draft final action ... a lot of conversation on **Ex. 5 - Attorney Client**

Ex. 5 - Attorney Client

From: Bodine, Susan
Sent: Sunday, November 5, 2017 4:45 PM
To: Brown, Byron <brown.byron@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: 108(b)

Further edits

Let's discuss

To: Fotouhi, David[fotouhi.david@epa.gov]
Cc: Brown, Byron[brown.byron@epa.gov]
From: Bodine, Susan
Sent: Mon 10/30/2017 8:54:08 PM
Subject: FW: Comments on 108(b)
Cercla 108-FAR edits-113017.docx

Ex. 5 - Attorney Client

From: Brown, Byron
Sent: Monday, October 30, 2017 4:39 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: Comments on 108(b)

Hi Barnes -- Here are the edits. Let me know if you have questions.

Byron R. Brown

Deputy Chief of Staff for Policy

Office of the Administrator

U.S. Environmental Protection Agency

From: Johnson, Barnes
Sent: Monday, October 30, 2017 1:51 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: RE: Comments on 108(b)

Thanks Susan,

Please let us know when we can see these comments and incorporate them into the package.

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPAland](#)

From: Bodine, Susan
Sent: Monday, October 30, 2017 1:50 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: RE: Comments on 108(b)

Thanks Barnes, I sent them to Byron and David Fotouhi (on Saturday) to ensure you were getting consistent guidance.

From: Johnson, Barnes
Sent: Monday, October 30, 2017 1:47 PM
To: Bodine, Susan <bodine.susan@epa.gov>

Cc: Breen, Barry <Breen.Barry@epa.gov>
Subject: Comments on 108(b)

Dear Susan,

We understand you will have comments for us on the package. We are trying to get this to OP by COB tomorrow so that OP can then forward the package to OMB on Wed, Nov 1; so we are anxious to get your input ASAP. Please let us know. Thanks.

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov | [@EPAland](#)

To: Fotouhi, David[fotouhi.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]
From: Bodine, Susan
Sent: Sat 10/28/2017 6:21:33 PM
Subject: RE: 108(b)
[Final Action Federal Register Notice rev 10-28 redline.docx](#)
[Final Action Federal Register Notice rev 10-28 clean.docx](#)
[forty.pdf](#)
[EPA-HQ-SFUND-2009-0265-0019.pdf Phase I.pdf](#)
[EPA-HQ-SFUND-2009-0265-0020.pdf Phase II analysis.pdf](#)

A redline and clean copy of my edits. These are not OECA comments.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

From: Fotouhi, David
Sent: Thursday, October 26, 2017 6:41 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: FW: 108(b)

David Fotouhi

Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

Tel: +1 202.564.1976

fotouhi.david@epa.gov

From: Michaud, John
Sent: Wednesday, October 25, 2017 8:44 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>
Subject: RE: 108(b)

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Thanks.

John R Michaud

Associate General Counsel

Solid Waste and Emergency Response Law Office

202-564-5518

michaud.john@epa.gov

From: Fotouhi, David
Sent: Tuesday, October 24, 2017 6:09 PM
To: Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>
Subject: 108(b)

I was told that the rule package is going through to final agency review now. Could you send me the most-recent version? Thanks.

David Fotouhi

Deputy General Counsel

Office of General Counsel

U.S. Environmental Protection Agency

Tel: +1 202.564.1976

fotouhi.david@epa.gov

ANALYSIS OF 40 POTENTIAL TSDs:

*Potential RCRA Treatment, Storage, and Disposal Facilities
Proposed to the Superfund National Priority List after 1990*

OFFICE OF SOLID WASTE

January 19, 2007

ANALYSIS OF 40 POTENTIAL TSDs:

Potential RCRA Treatment, Storage, and Disposal Facilities Proposed to the Superfund National Priority List after 1990

The non-federally owned RCRA treatment, storage, and disposal (TSD) facilities that were proposed to Superfund's National Priority List (NPL) post-1990 are facilities that almost always had significant environmental problems prior to being subject to the RCRA hazardous waste management requirements. In most cases, these facilities had been significant industrial manufacturers since the early 1900s. When they entered the RCRA waste management program in the 1980s, these facilities already had widespread environmental contamination issues. The hazardous waste releases from RCRA regulated TSDs at these facilities were in almost every case insignificant when compared to the widespread contamination that was present at these facilities prior to the enactment of RCRA.

Background

Recommendations. In November 2003, the Environmental Protection Agency initiated a study of the Superfund program, commonly referred to as the "120 Day Study."¹ This "120 Day Study" resulted in more than 100 recommendations, two of which are related to the area of RCRA Financial Assurance. Recommendations 10 and 11 address TSD facilities subject to Subtitle C of RCRA, as well as hazardous waste generators, which are not subject to the financial assurance requirements of Parts 264 and 265.² Specifically, the study recommended:

Recommendation 10

OSWER should evaluate the history of NPL listings and removal actions to determine what percent were RCRA treatment, storage, and disposal facilities or hazardous waste generators and to what extent these facilities present a continuing burden to the Superfund program.

Recommendation 11

If the evaluation confirms a high correlation with RCRA-regulated facilities, OSWER and OECA [Office of Enforcement and Compliance Assurance] should

¹ *SUPERFUND: Building on the Past, Looking to the Future*, April 22, 2004.

² A third recommendation addresses financial assurance at non-RCRA sites. Recommendation 12 states, "For facilities not covered under RCRA, OSWER [Office of Solid Waste and Emergency Response] should study whether promulgating new regulations under CERCLA's broad financial assurance authorities could reduce the future needs of the Superfund program." OSWER is addressing this recommendation through a separate analysis.

examine different approaches to financial assurance under the RCRA program to reduce the likelihood of RCRA-regulated facilities becoming part of the future Superfund universe.

Prior Analysis. In order to address Recommendation 10 of the Superfund 120 Day Study, the Office of Solid Waste (OSW) performed ID matches of CERCLIS (EPA's Superfund database) sites to RCRAInfo (EPA's database of RCRA waste handlers) sites to determine how many RCRA TSDs and hazardous waste generators became CERCLA sites (both NPL sites and Non-NPL sites requiring Removal Actions). As RCRAInfo had no pre-existing, encompassing universe of facilities that had conducted TSD activities since the inception of the RCRA program, one needed to be created. In creating a list of facilities, OSW decided that being overly inclusive was better than potentially leaving off facilities that were, or had been, TSDs. Thus, OSW used a broad search strategy. Based on this strategy, OSW compiled a list of potential TSDs made up of all facilities that: (1) had been on the GPRA Permitting baseline, on the GPRA Post-Closure baseline, or in the Corrective Action Workload;³ (2) had units which had been clean closed; (3) had units which had been referred to Superfund; or (4) had been included in the mutually agreed-upon Moore-Myers Superfund referrals list.⁴ The result was a list of 6,992 potential TSDs. Because of the broad search strategy, this list includes facilities that were never RCRA TSDs, and it also includes facilities whose RCRA obligations have long since been satisfied. (See later discussion.)

Through the process of ID matching, 624 of these 6,992 potential TSD facilities were found to be listed in CERCLIS (both NPL sites and Non-NPL Removal sites), and 143 of that total were non-federally owned facilities that were either proposed to, listed as final on, or deleted from the NPL. The data analysis, undertaken during the summer of 2005, found that the 143 potential TSD facilities⁵ make up 9% of the NPL universe of 1,587 sites (proposed, listed, or deleted). These 143 facilities account for \$979 million (or approximately 10%) of the over \$10 billion in CERCLA site-specific expenditures⁶ at the 1,587 sites.^{7,8} While the data analysis indicated that only 2% (or 143) of the 6,992

³ Currently, EPA believes that there are over 6,800 facilities potentially subject to RCRA Corrective Action statutory authorities. Of these, approximately 4,000 facilities are required to complete corrective action and are already implementing corrective action or will need to implement corrective action as part of the process to obtain a permit to treat, store, or dispose of hazardous waste. (These 4,000 facilities are the "Corrective Action Workload" referenced above.)

⁴ This is a list of 155 High-ranked facilities in the Subject to Corrective Action Universe, not Listed on the FY 2008 Corrective Action baseline. These facilities were referred from RCRA Corrective Action to the Superfund program and proposed to, listed on, or deleted from the NPL.

⁵ Because of the expansive criteria used in defining the potential TSD universe (as previously noted), not all of these 143 facilities turn out to be RCRA TSDs.

⁶ Superfund site-specific expenditures pulled from the Agency's Integrated Financial Management System (IFMS) do not include indirect costs. As opposed to direct site-specific costs (resulting from activities such as site assessment, investigation, and cleanup), indirect costs cannot be attributed to any particular site and support the Superfund program as a whole. Examples of indirect costs are budget functions, human resources management, policy and planning functions, and support costs used to implement site-specific activities.

⁷ Through the ID matches described earlier, EPA performed similar analyses to quantify the costs associated with hazardous waste generators proposed to, listed on, or deleted from the NPL, and with potential TSDs and hazardous waste generators that underwent Superfund Removal Actions (but were not

potential TSDs ended up proposed to, listed on, or deleted from the NPL, EPA recognized that it was important to understand why TSD facilities were being referred to Superfund (and eventually proposed for NPL listing) in order to provide insight into how financial assurance requirements had operated, and to determine whether any general lessons could be derived.

Design of Analysis of 40 Potential TSDs⁹

To better understand the circumstances surrounding the referral of RCRA TSDs to Superfund (specifically, those that were proposed to, listed on, or deleted from the NPL), OSW looked closely at the potential TSDs (as defined by the search strategy) that were proposed to the NPL after 1990. There were 40 potential RCRA TSDs^{10, 11} within this category. OSW selected these 40 facilities for further investigation for two reasons. First, these facilities would be better predictors of the types of RCRA facilities which could be listed on the NPL in the future. By 1990, most of the significant 1984 HSWA regulations were promulgated; for this reason, the RCRA regulatory program governing listing of hazardous waste, financial assurance, and corrective action has changed little after 1990. Second, the Superfund deferral policy, which governs the types of RCRA facilities being proposed for Superfund NPL action, underwent several changes during the 1980s but has not changed significantly since 1990. Therefore, after 1990, policy changes in the RCRA regulatory program and the Superfund deferral policy could be eliminated as factors for RCRA TSDs being proposed to, or listed on, the NPL.

proposed to the NPL). The percentage of all hazardous waste generators proposed to the NPL was 0.06%; however, Superfund costs at these sites accounted for 17% of site-specific expenditures at the 1,587 NPL sites. Potential TSDs represent 2% of all Non-NPL Removal sites (6% of total expenditures), while hazardous waste generators account for 5% of Non-NPL Removal sites (10% of total expenditures).

⁸ Both of these expenditure figures were derived from information pulled directly from IFMS by the Office of Superfund Remediation and Technology Innovation (OSRTI) in May 2005, and include expenses reported through the end of FY 2004. The expenditure data cited here, and throughout the Analysis of 40 Potential TSDs, include agency-wide costs such as payroll and other intramural costs, but do not include special account, State-cost share, and other reimbursable account resources or indirect or other annual allocation resources.

⁹ The Analysis of 40 Potential TSDs does not address TSDs or hazardous waste generators that underwent Removal Actions (as Non-NPL Superfund sites), or hazardous waste generators proposed to, listed on, or deleted from the NPL. The Superfund site-specific expenditures associated with potential former RCRA TSDs and hazardous waste generators that became Non-NPL Removal sites totaled \$290 million (combined), while the expenditures associated with potential former TSDs and hazardous waste generators that were proposed to, listed on, or deleted from the NPL totaled \$2.7 billion (combined). Given the magnitude of the cost differential, OSWER made a decision while responding to Recommendation 11 to focus on NPL sites, as opposed to Non-NPL sites which underwent Removal Actions. Furthermore, although this analysis does not address costs associated with former RCRA hazardous waste generators proposed to, listed on, or deleted from the NPL, these sites are being analyzed as part of the response to Recommendation 12 (which also examines contamination at non-RCRA NPL sites).

¹⁰ These 40 facilities are a subset of the 143 potential TSDs referenced in the analysis above. Specifically, they are the subset of those 143 facilities that were proposed for listing on the NPL after 1990.

¹¹ Throughout this document, we generally refer to the group of facilities we are analyzing as the 40 potential RCRA TSDs, or simply the 40 facilities. Because of the expansive criteria used in defining the potential TSD universe (as previously noted), not all of these 40 facilities turn out to have been RCRA TSDs, and some operated (illegally) outside the regulatory framework.

For this analysis, OSW looked at the facility-specific characteristics of these 40 facilities to determine if there were any specific predictors for why these facilities were listed or proposed for listing on the NPL, and whether similar types of facilities would be proposed for listing on the NPL. OSW conducted its analysis of these 40 facilities in several phases. Initially, OSW conducted a series of preliminary conference calls with the Regions in order to gain information on these sites. OSW staff then pulled and analyzed data from detailed RCRAInfo permitting reports and researched NPL Site Descriptions, Regional NPL Fact Sheets, and information from other sources, such as Agency for Toxic Substances and Disease Registry (ATSDR) Public Health Assessments and court decisions. Individual site-specific summaries (*see* Attachment III) were prepared detailing and describing facility type, historical operations, waste management activities (including RCRA activities), permitting histories, specific hazardous waste units, remediation activities, Superfund expenditures, bankruptcy information, and cost recovery information, as well as relevant financial assurance data such as the mechanisms used, amounts assured, regulated units covered, and amounts drawn upon. Next, OSW requested (in several phases) that the Regions verify the specific details contained in these summaries and add in any additional information, where appropriate.¹² Included in this request was a list of questions to the Regions. While the Regions responded and provided essential details in many cases, the amount of information they were able to provide, and the extent to which they were able to answer the questions, in many instances, was limited by the historical nature of the information. OSW followed up with another series of Regional conference calls. The information gained from this process was then integrated back into the individual summaries. At the same time as this integration was taking place, an additional level of research and QA/QC was performed by OSW staff (using RCRAInfo reports and online information sources). The information from these 40 summaries was gathered together in a Summary Matrix (*see* Attachment II) and is used throughout this analysis. As was noted before, we used broad criteria for determining potential RCRA TSDs. As we examined the waste management history of these facilities, it became apparent that several of the 40 NPL sites were not RCRA-regulated TSDs or had marginal RCRA histories and we discuss this later in this analysis.

OSW examined the financial assurance status of the 40 facilities to assist in addressing Recommendation 11. Where information was available, OSW looked at financial assurance parameters to further inform the decision of whether changes in RCRA Financial Assurance requirements could reduce the likelihood of RCRA-regulated facilities becoming part of the future Superfund universe.

¹² *See* Attachment I: Memorandum: Request for Facility-Specific Information to Support Financial Assurance Analysis. (This memorandum was the first of three phases in OSW's multi-phased request to the Regions. Similar memos were sent to the rest of the Regions that had facilities in the group of 40.)

Summary Results

Legacy Contamination. This analysis examines the reasons for Superfund expenditures at the 40 potential RCRA TSD facilities that have been proposed to the NPL over the past 15 years (including those facilities subsequently listed as final or deleted). Although these 40 facilities were proposed for listing on the NPL after 1990, the great majority of contamination at these facilities, in most cases, occurred many years beforehand.¹³ Thus, their environmental problems predated the RCRA hazardous waste regulatory program, including the financial assurance obligations.

Through the Hazardous and Solid Waste Amendments of 1984, Congress mandated that persons seeking RCRA permits address contamination from past waste management activities at their facilities. Owners and/or operators of RCRA TSDs are required to implement corrective action for all hazardous and solid waste management units at their facilities. The RCRA Corrective Action program has been successful in controlling unacceptable human exposures and stabilizing groundwater contamination at most of the more complex contaminated sites. Specifically, by the end of fiscal year 2005, human exposures had been controlled at 96% of the facilities on the Corrective Action Baseline,¹⁴ and groundwater contamination had been stabilized at 78% of these facilities.

Superfund Referrals. While EPA has adopted a policy of addressing RCRA facilities first under RCRA Corrective Action authorities, some RCRA TSDs have been referred to the Superfund program. If the owners and/or operators of RCRA facilities are financially unable or are unwilling to conduct corrective action, then these facilities are prime candidates to be addressed under the Superfund program. The Superfund NPL listing policy, formalized in the early 1990s, addressed these two specific situations as appropriate conditions under which RCRA facilities would be cleaned up under Superfund. This policy has been largely unchanged for the past 15 years. Of the 40 facilities examined in this analysis, 28 of them were bankrupt, and therefore were unable to complete RCRA Corrective Action. A number of facilities were also unwilling to conduct RCRA Corrective Action. It is not clear from historical information the exact number of sites in this “unwilling” category. In any case, the analysis indicated that a number of facilities failed to comply with EPA or State directions to clean up past contamination, and EPA sought recourse to Superfund authority.

Lag Period Between End of Operations and NPL Proposal. In many cases, facility operations ended well before the sites were proposed for NPL listing. About half of the 40 facilities ceased operating prior to 1990. On average, for those facilities which ceased

¹³ Of the 40 potential RCRA TSDs analyzed, 32 of them were clear cases where legacy contamination was the major constituent of the environmental damage present at those sites. Two facilities were clear cases where the majority of the contamination cannot be considered “legacy.” At the other six facilities, it is not clear whether the majority of waste was due to legacy contamination.

¹⁴ EPA developed the RCRA Corrective Action Baseline in conjunction with the States as a result of a mandate in the Government Performance & Results Act (GPRA) requiring EPA to measure and track program progress toward achieving clearly defined results. There are over 1,700 facilities on the FY 2005 RCRA Corrective Action Baseline.

operations (or terminated the operations that resulted in the environmental damage), there is approximately an eight-year delay between facility shutdown and NPL proposal.¹⁵

Non-Notifiers. Six of the 40 facilities investigated never notified EPA that they were managing hazardous waste. These were National Southwire, American Brass, Jasper Creosoting, Jennison-Wright, Pacific Sound Resources (PSR), and Taylor Lumber. Four of these six facilities were wood treating operations. Two facilities (National Southwire and Pacific Sound Resources) may not have been engaged in activities requiring notification; see later discussion on “Non-TSDs and Marginal RCRA Histories.” The majority of the wastes and/or waste management processes at these six operations were discovered during the 1980s and early 1990s.

Federal and State authorities took significant action against four of the non-notifiers for managing hazardous waste without a RCRA permit or Interim Status. At one facility (PSR), officials pleaded guilty to violations of RCRA in 1985. At another facility (Jasper Creosoting), the Texas Attorney General’s Office in 1986 filed a Plaintiff’s Original Petition. At a third (American Brass), EPA and State authorities took several enforcement actions from 1986 until operations ceased in 1992, for RCRA violations, including the disposal of hazardous waste without a permit. Finally, starting in 1993, EPA issued several complaints under RCRA 3008 against Taylor Lumber for its failure to obtain a permit and provide financial assurance. In 1995, EPA issued a 3008(h) order, requiring site-wide corrective action (including provisions for financial assurance) at the facility. Taylor had always been a marginally viable operation; EPA was made aware of this (during the mid-1990s, Region 10 received and reviewed information on Taylor’s financial status and ability to pay). For this reason, EPA withdrew its 3008 complaint in 1999 in order to provide the owner/operator a chance to focus its efforts and limited financial resources on addressing the environmental problems at the facility, as opposed to tying that money up in a financial assurance mechanism. In this manner, Taylor performed a Potentially Responsible Party (PRP)-led Removal Action (initiated in 1999, completed in 2000) before it went bankrupt in 2001. (No record of federal or State action against either of the two other facilities, National Southwire and Jennison-Wright, could be found.) As the description above indicates, these facilities from the beginning were unwilling or unable to comply with RCRA Subtitle C requirements as they existed at the time. In these cases, the RCRA requirements appear to have worked as intended: they forced marginal and/or uncooperative facilities to shut down as hazardous waste operations.

Illegal Waste Management and Non-Compliance. Aside from those facilities which never notified they were treating, storing, or disposing of hazardous wastes, at least another twelve facilities were engaging in illegal waste management practices. Significant environmental damage at several facilities (Escambia Wood,

¹⁵ A few facilities are still active; however, some of these are no longer conducting the operations which caused the environmental damage, and others which are currently active are now conducting operations unrelated to the former (and, in one case, separate) waste disposal sites which were the grounds for NPL proposal. In cases such as these, the end-of-operation dates used were those at which the waste management practices that caused the environmental damage came to an end.

Petrochem/Ekotek, Omega Chemical, Alabama Plating, and LCP Chemicals, GA) resulted from improper and illegal waste disposal practices (in violation of permits at certain facilities where permits were in place). One facility (Petrochem/Ekotek) was issued repeated Notices of Violation by its State agency for permit violations, while another facility (Alabama Plating) illegally disposed of galvanizing wastes in sinkholes on the facility's property. At one of the facilities (LCP Chemicals, GA), the owner/operator illegally disposed of chemical manufacturing wastes in surface impoundments. Several LCP executives were convicted of conspiring to violate RCRA, CERCLA, and the Clean Water Act. The former chairman of the board for the parent firm was ordered to serve nine years in prison, the longest sentence handed down for environmental crimes.

Two of these twelve facilities were the subject of EPA or State actions, and subsequently refused to comply with the conditions set out by regulatory agencies. One of these (Cam-Or) never submitted its Part B application or provided financial assurance. After a consent agreement and final order in 1986, the owners agreed to close the facility; however, Cam-Or voluntarily liquidated its assets in order to avoid closure and cleanup obligations. As a result of an enforcement order, another facility (Hart Creosoting) was required to submit a revised permit application and compliance plan. Although the State agency received a revised Part B from the facility (which stated that closure/post-closure financial assurance had been procured), no financial assurance mechanisms were ever actually submitted or put in place. As with non-notifiers, the situations described in this section are indicative of compliance issues, as opposed to regulatory issues.

Financial Assurance Information. As part of the request to the Regions for facility-specific information, OSW asked a series of questions regarding the financial assurance status of these 40 facilities. Some of these questions were:¹⁶

- Was there financial assurance in place for the regulated units?
- What type of mechanism was used and which units were covered?
- For a facility using the financial test, was it passing the financial test at the time of NPL proposal?
- How much (if any) of the financial assurance money has been collected and used for closure/post-closure or Corrective Action activities by the State?
- Was there financial assurance for Corrective Action at Solid Waste Management Units?

OSW received relatively limited information in response, largely because the questions dealt with events taking place many years in the past. Many of the facilities ceased operations during the late 1980s and early 1990s, and a number of them, as indicated above, never had financial assurance. Given the age of the permit files, this is understandable.

¹⁶ See Attachment I.

In spite of the difficulty in analyzing this financial assurance information, several trends are apparent. There were several instances where facilities converted to generator-only status and financial assurance was no longer required. There were other cases where facilities either were non-notifiers that never complied with RCRA (National Southwire and Pacific Sound Resources) or in fact were never RCRA TSDs (Sharon Steel Farrell Works Disposal Area). Furthermore, there were several instances where the required financial assurance (for closure/post-closure and for corrective action) was not provided by the facilities or was provided at an inadequate level, either because the facilities were recalcitrant or were unable to comply. This, therefore, does not point towards a failure of the financial assurance regulations.

As described above, the available financial assurance information does not point to problems in the financial assurance regulations or the basic approaches EPA or the States took to implementing them.

Costs. As a result of the prior data analysis mentioned above, OSW determined that the Superfund site-specific expenditures at these 40 facilities totaled \$425 million. This figure is derived from expenditure information in IFMS. Many of these facilities will require future Fund expenditures; however, the amount of those expenditures is unknown. At several of these facilities, however, PRPs are funding much (or all) of the cleanup cost. (See later section for discussion on cost recovery at these facilities.) The numbers taken from IFMS do not include indirect costs at these Superfund sites, which have been reported to run between 30% and 50% of direct costs.¹⁷

Geographic Distribution. Most of the facilities are located in the South, including Texas. Twenty-three of the 40 potential TSDs (or 58%) were located in EPA Regions 4 and 6. However, over one-third of the \$425 million in CERCLA funds expended at these 40 sites was spent remediating wastes at two megasites in Region 1, Raymark and GE Housatonic (combined expenditures of \$162 million). A specific breakdown by Region, including Superfund expenditures, is as follows:

¹⁷ These indirect cost estimates are based on communications with Office of Site Remediation Enforcement (OSRE) staff.

	Facilities	Expenditures	% of Total Expenditures
Region 1	3	\$165,326,592	38.9%
Region 2	2	\$4,557,055	1.1%
Region 3	1	\$3,347,911	0.8%
Region 4	11	\$84,490,901	19.9%
Region 5	4	\$5,813,168	1.4%
Region 6	12	\$102,617,709	24.1%
Region 7	0	\$0	0%
Region 8	2	\$7,293,666	1.7%
Region 9	3	\$44,600,140	10.5%
Region 10	2	\$7,074,010	1.7%
Total	40	\$425,121,153	100%

The numbers reported in the above table reflect end of fiscal year 2004 IFMS expenditure figures, which were the most up-to-date numbers available at the time the analysis was initiated. Information reflecting costs reported through fiscal year 2005 is currently available, which shows minimal rises (less than 8%, overall) in expenses at these 40 NPL sites.

Cost Recovery. Approximately 42% of the overall costs incurred by Superfund at these 40 sites has been recouped via cost recovery.¹⁸ The Superfund statute provides the authority for the federal government to recover what it spent on cleanup activities. When EPA does the cleanup work using Superfund money, it generally tries to recover those costs from responsible parties.¹⁹ Although \$425 million has been spent, Superfund has recovered at least \$177 million via judgments, settlements, and consent decrees (with an additional \$18 million in proposed settlements).^{20, 21} Cost recovery figures have been

¹⁸ It should be noted that Superfund cost recovery is not a replacement for effective RCRA Financial Assurance requirements. However, Superfund is an important backstop for RCRA in situations where owners/operators are financially unable or unwilling to conduct corrective action. It is clearly appropriate to consider cost recovery when quantifying the costs associated with RCRA facilities being addressed by Superfund.

¹⁹ If a potentially responsible party is unwilling to pay for cleanup, the federal government may take action and later seek to recover from the PRP the cost of the response. Also, if financially capable PRPs cannot be identified within a reasonable time to address an imminent and substantial endangerment, the federal government may initiate cleanup activities and later seek to recover the cost of the activities from one or more responsible parties identified later in the process.

²⁰ In certain cases, the analysis does not specify from whom EPA recovered costs. Although costs were recovered in many cases from the RCRA facility owners/operators, some costs were recovered from generators or pre-RCRA site owners. Given the findings that a great majority of the contamination at the 40 sites was historical legacy contamination, recovering costs from prior owners/operators may indeed be appropriate from an equitability standpoint. Quantifying the equitability of the cost recovery was not part of this analysis.

²¹ An additional \$36 million was collected from GE to reimburse EPA for remediation work performed at the Housatonic River site. For financial tracking purposes, a separate site identifier (still under the same CERCLIS ID) was set up for a 1.5 mile stretch of the river whose cleanup work is being funded by a

included where available. Some of the Regions were not able to provide information, while others indicated that there were several sites at which cost recovery negotiations were still ongoing. The actual amount of money recovered may indeed be higher as a result of possible additional funds recovered, but not reported, as well as continuing settlements. Amounts are also subject to increase based on future settlements with PRPs. Besides EPA and State authorized environmental agencies, other public entities have also received significant compensation and reimbursement for administrative costs and cleanup work performed at several of these sites (over \$20 million in funds and assets). Additionally, PRPs are already funding much of the cleanup at some of the 40 sites (such as Casmalia), and agreements are in place for PRPs to finance all future cleanup work at certain other sites (Alcoa).

Non-TSDs and Marginal RCRA Histories. As discussed earlier, a number of the 40 facilities reviewed in this analysis operated outside the RCRA regulatory structure. Six were non-notifiers, and another twelve were involved in illegal waste management activities. In addition, one facility (Sharon Steel Farrell Works Disposal Area) was clearly not a TSD, even though it was reported in our data search. Thus, nearly half of the 40 sites reviewed in this analysis were illegal operators or marginal RCRA facilities (or in the case of one facility, not a TSD).

The operating plant for Sharon Steel was a legitimate RCRA TSD, with an EPA ID number. However, the NPL site consists of a non-contiguous dumpsite area where Sharon Steel disposed of slag and other wastes. This dumpsite was placed on the NPL in order to provide parties interested in mining the slag some comfort that they would not become PRPs. (The operating plant itself is being addressed separately under the oversight of PADEP. The current owner and operator of the manufacturing facility, Caparo Steel Company, entered into a consent order and agreement with PADEP in 1994 to eliminate all imminent and substantial threats to public health and the environment posed by the facility. The disposal area showed up on the list of 40 because it was given the same EPA ID as the former operating plant, and this list was created by ID matches of CERCLIS sites to RCRAInfo sites, as described above.)

At another one of the 40 sites (GE Housatonic), the principal source of contamination was polychlorinated biphenyls (PCBs), which are not directly regulated under RCRA, but fell under corrective action requirements only because of other, unrelated activities at the site. (In addition, EPA's decision to address contamination at the GE Housatonic site under CERCLA does not reflect a problem with financial assurance.)

Additionally, there are other sites where the regulatory status of the facility is unknown since the early RCRA history was not accurately contained in RCRAInfo. Therefore, of the 40 sites, one of them (Sharon Steel Farrell Works Disposal Area) is clearly not a former TSD, while the RCRA status of two of them (National Southwire and Pacific

special account. The additional \$36 million in cost recovery was collected from GE to reimburse EPA for cleanup activities funded by this special account. Since the Superfund site-specific expenditures pulled from IFMS do not contain special account money (as noted earlier), this \$36 million was not included in the \$177 million cost recovery figure noted above.

Sound Resources) is unknown. (We view these two sites as marginal because we were not able to confirm the nature of their RCRA activities from the available data, but in the case of PSR, for example, the facility was subject to RCRA enforcement action.)

Analysis of the Specific Groups

The 40 potential RCRA TSD facilities can be categorized into six major groups according to the type of operations conducted:

2 facilities were Commercial Waste Management operations: Aqua-Tech Environmental, Inc. (Groce Labs), SC; and Casmalia Resources, CA;

14 facilities were Wood Treatment operations: Escambia Wood, FL; Brunswick Wood Preserving, GA; Camilla Wood Preserving, GA; Picayune Wood Treating, MS; Jennison-Wright, IL; Popple, AR; Jasper Creosoting, TX; Mountain Pine Pressure Treating, AR; Hart Creosoting, TX; Garland Creosoting, TX; Marion Pressure Treating, LA; McCormick & Baxter Creosoting, CA; Pacific Sound Resources, WA; and Taylor Lumber and Treating, OR;

10 facilities were Metal Smelting operations: Sharon Steel (Farrell Works Disposal Area), PA; National Southwire Aluminum, KY; Ross Metals, TN; American Brass, AL; Macalloy, SC; US Smelter and Lead Refinery, IN; National Zinc, OK; RSR, TX; Delatte Metals, LA; and Asarco (Globe Plant), CO;

5 facilities were Chemical Manufacturing operations: LCP Chemicals, NJ; Diaz Chemical, NY; LCP Chemicals, GA; Alcoa (Point Comfort)/Lavaca Bay,²² TX; and Omega Chemical, CA;

4 facilities were Oil Refinery operations: CAM-OR, IN; Indian Refinery – Texaco Lawrenceville, IL; Hudson Refinery, OK; and Petrochem Recycling (Ekotek Plant), UT;

5 facilities were Other Manufacturing operations: Raymark Industries, CT; GE (Housatonic), MA; Nuclear Metals, MA; Alabama Plating, AL; Rockwool Industries, TX.

²² Although Alcoa began operations as an aluminum smelter in 1948, and further continued to refine bauxite ore into alumina as its central continuing business operation, the major sources of contamination at the Lavaca Bay site (mercury and polycyclic aromatic hydrocarbons (PAHs)) resulted from on-site chemical manufacturing activities. (This included the production of chlorine gas, sodium hydroxide, electrode binder pitch, and creosote.) For this reason, the Alcoa site has been placed in the Chemical Manufacturing section.

Wood treatment and metal smelting operations, which combined to make up over half of the overall universe, were generally located in Regions 4 and 6. All of the TSDs from Region 1 were other manufacturing operations. Many of the sites in the other groups (such as chemical manufacturing) were distributed across the country. The following table breaks the six major groupings down by Region:

	Regions										
	1	2	3	4	5	6	7	8	9	10	Total
Commercial Waste Mgmt.	-	-	-	1	-	-	-	-	1	-	2
Wood Treatment	-	-	-	4	1	6	-	-	1	2	14
Metal Smelting	-	-	1	4	1	3	-	1	-	-	10
Chemical Manufacturing	-	2	-	1	-	1	-	-	1	-	5
Oil Refinery	-	-	-	-	2	1	-	1	-	-	4
Other Manufacturing	3	-	-	1	-	1	-	-	-	-	5
Total	3	2	1	11	4	12	0	2	3	2	40

The overall Superfund site-specific expenditures used for remediation activities at these 40 facilities totaled \$425 million. Although the average expenditures exceeded \$10 million per site, the average Superfund costs of the 38 facilities, excluding the two megasites in Region 1, were just under \$7 million per site. Other manufacturing sites accounted for the highest level of Superfund expenses, but this was largely due to GE and Raymark. Also, Casmalia accounted for most of the money spent on commercial waste management sites. Chemical manufacturing sites had the fewest Superfund dollars expended on a per-site basis, at under \$4 million per site. The table below sums and averages the Superfund expenditures for the facilities in each of the six groups:

	Facilities	Superfund Expenditures	% of Total Expenditures	Average Expenditures
Commercial Waste Management	2	\$22,826,347	5.4%	\$11,413,174
Wood Treatment	14	\$106,652,567	25.1%	\$7,618,041
Metal Smelting	10	\$79,834,835	18.8%	\$7,983,484
Chemical Manufacturing	5	\$18,852,499	4.4%	\$3,770,500
Oil Refinery	4	\$20,574,698	4.8%	\$5,143,675
Other Manufacturing	5	\$176,380,207	41.5%	\$35,276,041 ²³
Total	40	\$425,121,153	100%	\$10,628,029 ²³

²³ It must be noted here that the two megasites (GE and Raymark) significantly skew the average expenditures figures. Excluding these two sites, the average amount of CERCLA expenditures at the remaining three Other Manufacturing sites is \$4,836,746. Excluding the two megasites, the average amount of CERCLA expenditures at each of the remaining 38 facilities in the entire universe of sites is \$6,927,663.

Commercial Waste Management

Of the 40 potential RCRA TSD facilities that were proposed for listing after 1990, two facilities (Aqua-Tech and Casmalia) were involved in commercial waste management. This is a relatively small number of facilities, compared to generators of hazardous waste that managed on-site (e.g., wood treaters, metal smelters). Both of these facilities operated under RCRA Interim Status standards. Because of numerous RCRA violations, neither of these facilities was ever issued a RCRA operating permit. These two facilities had long histories of mismanagement of hazardous waste, and the combined effect of RCRA regulations was to shut down their operations. Each facility had interim status terminated in 1991, and each was referred to CERCLA for closure and cleanup at that time. Aqua-Tech and Casmalia were facilities with numerous RCRA violations, with owners/operators unwilling to comply with RCRA requirements. Under the CERCLA deferral policy, these facilities were referred from RCRA to CERCLA for cleanup (*see* EPA 540-R-95-002g; 1995).

Aqua-Tech Environmental Inc., SC, is a closed RCRA treatment, storage, and disposal facility. From approximately 1940 until 1968, the property was used as a municipal solid waste landfill. Beginning in 1974, a hazardous waste treatment, storage, and reclamation facility was operated over the former landfill site. Starting in 1981, the facility operated under RCRA Interim Status. After several complaints, RCRA inspection violations, and on-site accidents, the facility was ordered to close. In 1991, a final permit decision was issued, and an operating permit for all of the waste management operations was denied. Interim status for the facility was terminated, and the facility was referred to CERCLA for closure/post-closure/cleanup activities (due to bankruptcy). Although Superfund has

spent \$1.9 million remediating Aqua-Tech, over \$1.7 million of cleanup costs have been recovered.

Casmalia Resources Hazardous Waste Management Facility, CA, is a closed commercial RCRA hazardous waste disposal facility. Between 1973 and 1989, the facility accepted more than 5.6 billion pounds of industrial and commercial waste, which included organic sludges, pesticides, solvents, acids, metals, caustics, cyanide, and polychlorinated biphenyls (PCBs). More than 10,000 companies and government entities sent waste to Casmalia during this period. Beginning in 1981, the facility operated under RCRA Interim Status. In 1989, facing multiple regulatory enforcement actions, the site stopped taking shipments of waste material. In 1991, the owners and operators abandoned efforts to properly close and clean up the site, claiming financial difficulties. California terminated work on the facility's permit and EPA terminated interim status. Casmalia had \$12 million in a trust fund for site closure, and this money was used to begin remedial cleanup activities. Although the current estimate for cleaning up the site is \$271.9 million, a total of \$162.4 million of this (with an additional \$18.1 million in proposed settlements) has been recovered from, or is being funded by, PRPs.

Wood Treatment

The 14 wood treatment facilities in this analysis had similar histories of operation. Most started in the early- to mid-1900s. They initially used coal tar derived creosote as the wood preservative. They treated wood products by submerging them in ponds containing a mixture of creosote and diesel fuel. By the 1970s, most of the wood treatment facilities switched from creosote to pentachlorophenol as the wood treatment chemical. Large pressure vessels were used to apply the pentachlorophenol mixture to the wood products. In the 1980s, if the facilities were still in operation, they switched to chromium copper arsenate (CCA) as the wood treatment chemical. Similar to the pentachlorophenol treatment, large pressure vessels were used to apply the CCA mixture.

At these wood treatment facilities, the vast majority of the wastes were generated and disposed of (either on- or off-site), prior to the waste being regulated under RCRA Subtitle C. Operations at some of these facilities started in the early 1900s, and some of the facilities had active waste disposal operations 50 years prior to the enactment of the RCRA hazardous waste management requirements.

About half of the wood treatment facilities notified in 1980 that they were conducting activities requiring a RCRA permit. Some of the other facilities notified at later dates, while four facilities never notified they were managing hazardous waste. In the early 1980s, wood treatment operations usually involved hazardous waste storage and treatment of listed wood treatment sludge (K001). In 1990, EPA updated its hazardous waste listing for certain wood treatment wastes. Wastes from the use of creosote (F034), pentachlorophenol (F032), and copper, chromium, arsenic (F035) wood treatment processes were specifically listed as hazardous wastes.

In 1985, RCRA TSD facilities had to certify that they had financial assurance and adequate groundwater monitoring systems or they lost interim status. A number of the wood treatment facilities closed at that time. In 1988, RCRA TSD facilities with surface impoundments had to either retrofit the impoundments with liners and leachate collection systems or close. Since many of the wood treatment facilities used storage/treatment surface impoundments, many wood treatment facilities decided to close their impoundments rather than retrofit them. Drip pads at wood treatment facilities became subject to RCRA regulations in 1990. These drip pad regulations were amended in 1992. In order to comply with regulatory requirements, drip pads must be designed to prevent waste migration by either having an appropriate surface coating or liner/leachate collection system.

The progression of new hazardous waste requirements with ever-increasing protection (financial assurance certification, groundwater monitoring certification, corrective action for past activities, surface impoundment requirements, and additional hazardous waste listing) contributed to many of the wood treatment facilities closing.

Metal Smelting

The metal smelting operations at the 10 facilities listed above started as early as the 1880s. Four of these facilities began operations before 1910, and all started operations prior to the implementation of the RCRA regulations. The smelting operations varied from primary ore smelting to secondary smelting of lead and brass.

The primary smelting operations included lead, zinc, copper, steel, aluminum, cadmium, gold, silver, thallium, and vanadium production operations. These smelting operations resulted in large amounts (millions of tons) of slag waste which were usually disposed of at or near the facilities. At one facility (Sharon Steel), millions of gallons of spent pickle liquor acid were dumped over the slag at the off-site disposal area until 1981; this resulted in significant groundwater contamination (metals). At another facility (National Southwire Aluminum), aluminum pot liners, calcium fluoride slurry from the air pollution control system, and refractory bricks were disposed of on-site in unlined surface impoundments and a disposal area. The smelting operations at another facility (Macalloy) generated 80,000 tons of chromium-containing wastes. At some of the primary smelting facilities, off-site airborne contamination occurred during early operations, prior to the installation of air emission control technologies. This airborne contamination resulted in neighboring soil contamination.

Secondary smelting operations in many cases involved lead battery recycling operations (4 out of the 5 facilities which conducted secondary smelting operations utilized spent lead-acid batteries as input into the smelting operation). The batteries were cut open and the lead plates were removed and smelted. Wastes included large amounts of blast furnace slag, acid waste waters, sludge, and plastic battery cases, which in many cases were disposed of on-site in surface impoundments and waste piles. Lead contamination of neighboring properties also occurred due to airborne transport of contaminants.

At these metal smelting facilities, the vast majority of the wastes were generated and disposed of (be it on- or off-site), prior to the waste being regulated under Subtitle C of RCRA. Operations at some of these facilities started in the late 1800s or early 1900s, and some of the facilities had active waste disposal operations 50 to 100 years prior to the enactment of the RCRA hazardous waste management requirements.

Chemical Manufacturing

The chemical manufacturing activities at the five facilities listed above started as early as 1903. A variety of chemicals were produced at these facilities, including: chlorine (through a mercury cell electrolysis process), sodium hydroxide, hydrochloric acid (HCL), anhydrous HCL, caustic soda, electrode binder pitch, creosote, halogenated aromatic compounds, organic solvents, and organic chemicals for the pharmaceutical, agricultural, photographic, color and dye, and personal care industries.

Early waste management practices at these facilities were rather rudimentary. In some cases, waste streams were diverted off-site into adjoining wetland areas or rivers. At the majority of these chemical manufacturing facilities, waste management started at least 50 years prior to the enactment of the RCRA hazardous waste management requirements.

Oil Refining

The refinery operations at the four facilities listed above started as early as the late 1800s. Two of the facilities were involved with refining crude oil, while the other two facilities were re-refiners of used oils. The principle products of these refinery operations were: liquid petroleum gas, motor gasoline, aviation gasoline, jet fuel, burner oil, diesel oil, home heating oil, fuel oil, lube oil, and asphalt materials.

The facilities operated for many years prior to the implementation of the RCRA hazardous waste regulations. Much of the waste present at these facilities is historical in nature, with a large percentage deposited before the Subtitle C regulations took effect. Waste management activities included storing waste in piles on-site, storing it in aboveground and in-ground tanks, disposing of wastes in retention ponds, lagoons, surface impoundments, and tar pits, and treating wastes in bio-treatment ponds and treatment units. The long history of pre-1980 unregulated waste disposal at these refinery operations led to widespread contamination at these facilities.

Other Manufacturing

Five of the facilities were involved with various other manufacturing activities that started as early as 1919. These facilities' operations included manufacturing asbestos-containing automotive products, manufacturing transformers (using PCBs), munitions,

and plastics, fabricating nuclear and specialty metals, electroplating and hot-dip galvanizing, and manufacturing mineral wool insulation. These manufacturing operations resulted in widespread on- and off-site contamination which occurred prior to the implementation of the RCRA hazardous waste regulations. Wastes were disposed of in waste piles, off-site wetlands and rivers, and on-site surface impoundments, as well as also being used as fill material for on- and off-site areas.

On-site surface impoundments that were used for waste disposal at three of these facilities lost interim status in 1985 and were forced to close. The unregulated waste disposal activities prior to RCRA at these manufacturing operations led to the widespread contamination of the facilities.

Through the Superfund cost recovery process, EPA and State agencies have recouped significant amounts of money from PRPs. At the GE Housatonic site, over \$45 million of the \$53 million spent on remediation has been recovered, with an additional \$36 million recovered from work funded from a special account. At Raymark, the Superfund program has recovered \$20 million of the \$108 million spent on remediating the site so far; additionally, \$6 million has been recovered by Connecticut from State funds used for conducting cleanup activities.

Main Findings

- Most of these 40 potential RCRA TSD facilities can be classified as “legacy facilities.” That is, most of the environmental damage present at these sites generally occurred before the RCRA hazardous waste regulations were promulgated and began to regulate TSD activities.
- A significant number of facilities were marginally capitalized, especially in comparison to many decades of environmental contamination. The fourteen wood treatment facilities, for example, fit into this category, as do the ten metal smelting operations. Many of these facilities were in economic sectors experiencing a considerable amount of difficulty in the 1980s and 1990s (for example, wood treatment and metal operations).
- Cleanup activities at these sites were generally not associated with failure of RCRA regulated TSD units. Corrective Action obligations stemming from RCRA regulated activities were usually relatively minor compared to the massive cleanups caused by pre-RCRA historical waste generation and disposal.
- Of the \$425 million Superfund has spent remediating these 40 sites, over one-third of that amount (\$162 million) was expended at two sites. Through the cost recovery process, Superfund has recouped \$177 million so far of the funds spent on cleanup activities at these 40 sites. Additionally, PRPs are funding much (or all) of the remediation at several of these sites.
- Six of the 40 facilities never notified that they were managing hazardous waste. Additionally, at least twelve others engaged in illegal waste management practices (and one other was not a RCRA TSD at all). These facilities therefore

operated outside the RCRA regulatory regime and were generally subject to enforcement actions before referral to CERCLA.

- A significant number of these facilities ceased operations, or ceased waste management activities, because they were unable to comply with RCRA hazardous waste requirements, including financial assurance requirements.
- EPA followed its RCRA deferral policy; that is, the facilities referred to Superfund appeared to be unwilling or unable to comply with the RCRA hazardous waste management requirements.

Conclusions

This analysis shows that the proposed listing of these 40 potential RCRA TSDs on the NPL was not due to a failure of the RCRA hazardous waste regulatory program, be it the financial assurance requirements or some other technical waste management standard. Rather, the analysis shows that the RCRA hazardous waste management requirements generally worked the way they were designed. Marginal RCRA TSD facilities were forced to cease operations as environmentally protective RCRA requirements were promulgated, and as these facilities were increasingly unable to comply with the protective standards and the RCRA Corrective Action requirements.

Given this information, EPA is not undertaking further analysis of RCRA TSDs on the NPL under Recommendation 11. EPA, however, recognizes that NPL listings are not the sole issue. EPA is now assessing whether to undertake changes to the RCRA Financial Assurance regulations and guidance based on recommendations of the IG, GAO, and the EFAB. This effort is proceeding on a separate track, and will provide useful information to EPA in evaluating the RCRA Financial Assurance regulations.

To: Bodine, Susan[bodine.susan@epa.gov]
From: Bodine, Susan
Sent: Thur 11/16/2017 8:17:32 PM
Subject: RE: CERCLA 108(b); opinion and other follow up matters

Ex. 5 - Deliberative Process

From: Stachowiak, Robert
Sent: Thursday, November 16, 2017 3:04 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Michaud, John <Michaud.John@epa.gov>
Subject: CERCLA 108(b); opinion and other follow up matters

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Hello again -

Ex. 5 - Attorney Client

Please let me know if you have any questions or need anything else.

-Rob S.

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From: LexisNexisDelivery@lexisnexus.com [mailto:LexisNexisDelivery@lexisnexus.com]
Sent: Thursday, November 16, 2017 2:57 PM
To: Stachowiak, Robert <Stachowiak.Robert@epa.gov>
Subject: Email:In re Idaho Conservation League_ 811 F.3d 502

Delivery

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From: Bodine, Susan
Sent: Mon 12/4/2017 3:42:44 PM
Subject: 108(b) administrative record
[docket-faq10-00-11.pdf](#)

Ex. 5 - Attorney Client

From the attached guidance:

“Under most EPA statutes, the administrative record may include documents that the decision-maker relied on in making the final decision, even if the documents were not physically placed in the docket at the time the rule document was signed. For example, a report cited in a final rule preamble and relied on by the decision-maker may be part of the administrative record even if it was not placed in the docket. In contrast, certain specific administrative record requirements apply to actions under CAA § 307(d) and TSCA § 411. Under these statutory provisions, the promulgated rule may not be based on any information which has not been placed in the docket. Generally, this means, that as of the date the final rule is signed, all materials that make up the administrative record for a rule issued under CAA § 307(d) or TSCA § 411 must be placed in the docket. See EPA’s *Administrative Records Guidance, October 2011* for more information (<http://intranet.epa.gov/adplibrary/adp-milestones/drafting.htm#record>).”

The final rule preamble says at pg 47:

“States have had similar experience with their own programs. The state of Nevada, which has roughly one fourth of hardrock mines in the potentially regulated universe of mines developed by EPA for purposes of analysis in the proposed rule, has not had a case involving taxpayer funded response action since 1991, when the state’s new rules were put in place.”^[1]

We cited NV comments but

Ex. 5 - Attorney Client

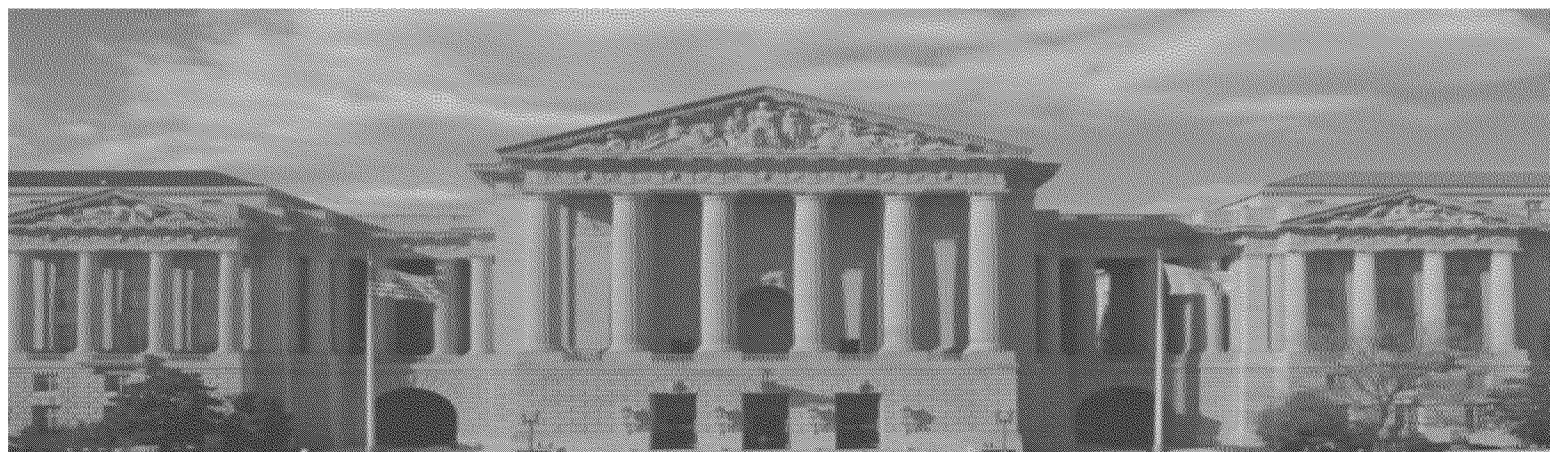
Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

[1] Nevada comments, at Appendix 3 (EPA-HQ-SFUND-2015-0781-2651).

EPA's Action Development Process

**Creating and Managing Dockets:
Frequently Asked Questions for EPA Action Developers**



October 2011



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1. What is the purpose of this document?

The purpose of this document is to provide a reference for U.S. Environmental Protection Agency (EPA) action¹ developers when they are creating and managing EPA dockets for rules and other documents issued by the EPA. As indicated by the use of non-mandatory language such as “may” and “should,” it provides recommendations to EPA staff and does not confer any legal rights or impose any legally binding requirements on EPA or the public.

2. Where can I get specific guidance on creating and managing dockets?

EPA Regions and offices may provide additional program-specific docketing guidance. You can obtain copies of such guidance from your Regulatory Steering Committee (RSC) representative or your Regional Regulatory Contact (RRC).

<http://intranet.epa.gov/adplibrary/contacts/>

3. Who will use this document?

This document serves as a tool for EPA staff, including program managers and action developers, who create and manage dockets. The guidance uses the term “you” to refer to the EPA rule writer or action developer.

¹ As used in this document, the term “action” means rules, policy statements, risk assessments, guidance documents, models that may be used in future rulemakings, Reports to Congress that are statutorily mandated, and any other agency activity for which a public docket is created. In this document, the terms “action” and “Agency action” are used in their broadest sense and are not limited to “action” or “Agency action” as those terms may be defined in statutes.

4. What is a docket?

A “docket” is a collection of documents made available by an agency for public viewing often associated with an opportunity for public comment. EPA’s dockets consist of materials used in developing a particular rulemaking or other action issued by the agency. Note that a docket and an administrative record are not necessarily the same. See EPA’s *Administrative Records Guidance, October 2011* for more information (<http://intranet.epa.gov/adplibrary/adp-milestones/drafting.htm#record>).

5. How is a docket made available for public viewing?

Dockets may be available either electronically on Regulations.gov (<http://www.regulations.gov>) or in paper form at EPA’s Docket Centers or other locations specified by EPA. The Federal Docket Management System (FDMS), which is publicly available at Regulations.gov, serves as EPA’s official electronic public docket and online comment system. Regulations.gov does not provide access to documents that contain confidential business information, copyrighted materials or other protected information, audio video material, oversized printed material, or other various physical items.

Most EPA Headquarters dockets are available at the EPA Docket Center located at EPA’s Federal Triangle Offices. Please note that the Office of Pesticide Programs Public Regulatory Docket is located in Arlington, Virginia, not Washington, DC. More information concerning public access to docket materials may be found at <http://www.epa.gov/dockets>. Regional dockets may be accessed electronically at Regulations.gov or at varying regional locations.

Note that a docket is not the only way to make materials available to the public. Unless there is a specific legal requirement to create a docket for a particular action or category of actions, EPA may make materials available to the public through other means such as posting them on the agency's Internet site or by making them available for inspection by appointment. (See Question 9 for more detailed information on specific legal requirements.)

6. Where can I go for additional information on how to create a docket?

In order to create a docket, you must first contact your Program Office or Regional Docket Manager. A list of Docket Managers, additional information about EPA's Docket Center, and procedures for creating a docket for your rulemaking or action may be found on the FDMS Informational webpage <http://intranet.epa.gov/fdmsinfo>. If you need further assistance with your docket, you can send an email to fdms@epa.gov, or contact your RSC representative or RRC for direction when ready to create your docket.

7. What is a general docket?

EPA creates dockets for an array of non-rulemaking actions or documents on which public comment may or may not be sought. EPA refers to such dockets as "general dockets." For example, EPA may be required by statute or regulation to solicit public comment on a range of non-rulemaking actions. These actions include, for example, requests for public comment on proposed collections of information under the Paperwork Reduction Act, proposed settlements and agreements in litigation, draft permits, and various types of approvals for state and tribal programs.

EPA also frequently solicits public comment on other materials of a non-rulemaking nature even though there may be no legal requirement to do so (e.g., Notices of Availability for reports, strategies, risk assessments and other scientific information, guidance documents, and requests for public input on publications in development).

Dockets for actions other than rulemakings contain materials relating to the development and issuance of those actions. Whether a docket is created, and the docket contents for such actions, may vary depending on the type of action being taken and the purpose of the solicitation of comment. For some types of actions, such as the OMB approval process for collections of information under the Paperwork Reduction Act, the applicable statute or regulations may specify the materials to be made available to the public. In the absence of specific docketing requirements, you may refer to the guidelines for rulemaking dockets in this guidance, or consult your RSC representative, your RRC, or your Office of General Counsel (OGC) or Office of Regional Counsel (ORC) attorney.

8. What is a rulemaking docket?

A rulemaking docket typically contains materials relating to each stage or phase in the development of a rule. EPA's rulemaking dockets include paper and electronic documents generated in connection with proposing, amending, repealing, or promulgating a rule.

The rulemaking docket generally contains the documents that form the basis for EPA's decision. EPA staff should assure that these materials are available to the public either through the docket or through other appropriate means. With respect to dockets made available for proposed rules, if a proposed rule relies on materials that are not placed in the docket,

commenters who cannot get access to the materials may question whether public notice was adequate.

9. What statutes and regulations contain specific provisions regarding EPA rulemaking dockets?

Docketing requirements can vary according to the statute under which they are written. Specific docketing requirements apply to certain actions under section 307(d) of the Clean Air Act (CAA) and section 411 of the Toxic Substances Control Act (TSCA). If you are developing an action under either of these provisions, you should consult with your program office RSC representative, RRC, or your OGC or ORC attorney. Briefly, these requirements relate to creating a docket, docket contents and other aspects of docketing. For rules subject to these provisions, section 307(d)(2) of the CAA and section 411(b) of the TSCA require EPA to establish a rulemaking docket no later than the date of the proposed rule. Among other things, the provisions address the location of dockets, public availability of docket materials, and the materials to be included in dockets. CAA §307(d)(6)(C) and TSCA § 411(d)(3) specify that the “promulgated rule may not be based . . . on any information or data which has not been placed in the docket as of the date of such promulgation.” CAA §307(d)(4) and TSCA § 411(c)(2)(B) contain specific docketing requirements for drafts of proposed and final rules and accompanying documents. Additionally, specific docketing requirements contained in EPA regulations at 40 C.F.R. § 25.10 direct EPA to include copies of public comments and any agency responses in a docket for rulemakings under the Clean Water Act, Resource Conservation and Recovery Act, and the Safe Drinking Water Act.

10. What executive orders contain specific provisions regarding rulemaking dockets?

For any rulemaking sent to the Office of Management and Budget (OMB) for review under Executive Order 12866 (“Regulatory Planning and Review”), the Order directs the agency to identify and make available to the public (1) the draft regulation and certain other documents sent to OMB for review, such as certain analyses and assessments; (2) the substantive changes between the draft regulation sent to OMB for review and the regulation subsequently announced; and (3) the changes made at the suggestion or recommendation of OMB. EPA implements these provisions by placing the materials in the rulemaking docket. For additional information see the guidance document “Compliance with E.O. 12866 Docketing Requirements.”²

11. What should be included in a rulemaking docket?

The documents in the rulemaking docket may include, but are not limited to, the following items:

Regulatory Text Documents, such as:

- Advance notice of proposed rulemaking.
- Proposed rule.
- Notice to extend or reopen the comment period.
- Final rule.
- Direct final rule.
- Notice of availability, or notice of data availability.
- Information collection request.

Background Documents, such as:

² E.O. 12866 and this guidance document can be found at <http://intranet.epa.gov/adplibrary/statutes.htm#ombreview>

- Relevant technical documents and factual information (e.g., data files, studies and analyses, graphs, charts; or technical resource documents).
- Guidance manuals and directives.
- Contractors' reports containing information relevant to the rulemaking; and/or other reports containing relevant information, such as trip reports.

[Note: Background documents generally should not include pre-decisional, deliberative materials. See Question 12, below, for further information].

Information received from members of the public, such as:

- Lists of participants in external group meetings regarding the rulemaking.
- Summaries of relevant information regarding the rulemaking received during external group meetings.
- Records of communications containing relevant information from members of the public, including summaries of telephone conversations or other contacts containing information relevant to the rulemaking.
- Redacted versions of documents from members of the public containing confidential business information (CBI) or redacted versions of other documents containing information whose disclosure is protected by statute. [Note: Although information received from other federal agencies may sometimes be included in the docket, pre-decisional deliberative communications from other federal agencies generally should not be docketed unless specifically required by statute, regulation or Executive Order. See Question 15 for further details.].

- Materials related to public hearings or meetings including transcripts or summary minutes, lists of speakers or attendees, and hearing or meeting briefing materials such as agendas and handouts.
- Copies of comments regarding a proposed rule or notice received from members of the public (whether during or after the applicable comment periods) and attachments submitted with those comments.
- Response to comments.

Supporting materials for statutory and Executive Order reviews, such as:³

- Initial and final regulatory flexibility analyses prepared under the Regulatory Flexibility Act or documentation supporting the factual basis for a certification of no significant economic impact on a substantial number of small entities.
- Documentation of any consultations or analyses under the Unfunded Mandates Reform Act and other relevant statutes and Executive Orders.
- E.O. 12866 materials documenting inter-agency review, if applicable, as discussed in Question 10.
- Supporting materials for any collection of information for which comment is being sought under the Paperwork Reduction Act.

³ For a list of applicable administrative statutes, executive orders, and EPA policies, go to EPA's Regulatory Development website at <http://intranet.epa.gov/adplibrary>.

12. Should I docket a post-signature change memo?

It depends upon the form of the memo. If the post-signature change memo is in the form solely of an internal recommendation to the Administrator, then it should not be placed in the docket. Such a document would be deliberative and pre-decisional and, therefore, should not be made available to the public. Similarly, since such memos are deliberative, they also are not included in the administrative record for the rule. (Administrative record guidance is here: <http://intranet.epa.gov/adplibrary/adp-milestones/drafting.htm#record>.) However, some post-signature change memos are in the form of a decision by the Administrator because they are signed by her/him. If that is the case, the document is a decision memo and not a deliberative document. It should be included in the docket and the administrative record. If you have questions about the nature of your post-signature change memo, please contact your OGC/ORC attorney to discuss.

13. What else should not be included in a rulemaking docket?

The docket generally should not include:

- internal documents that capture pre-decisional internal discussions that were deliberative in nature and consist of materials generated prior to the making of a decision such as day-to-day staff notes;
- briefing papers, action memos and other staff advice and recommendations;
- confidential attorney-client communications;
- confidential attorney work-products;
- draft decision documents; and
- internal EPA memos.

Because these types of materials document the agency's internal decision-making process prior to the agency's final decision, rather than providing support for the final decision, they are generally excluded from the docket. [Note: One general exception is that the rulemaking docket does include the pre-decisional deliberative materials docketed under the specific statutory and executive order provisions discussed under Questions 9 and 10, above.]

14. What should I do if I include something in the docket that shouldn't be there?

If a document is mistakenly placed into the docket and you believe it should be removed because it contains pre-decisional deliberative material or for other reasons, you should notify the Docket Center and consult your OGC or ORC attorney. The Docket Center has a form that you will need to fill out and have signed by your manager and your OGC/ORC attorney. On the form you will explain why the document is being withdrawn from the docket. That explanation will be placed in the docket to explain why the document is no longer available.

15. What if a "pre-decisional" document contains factual information that helped to form the basis of a final decision?

In the development of an agency action, the factual information that forms the basis for the final decision, or a necessary justification for a policy decision that is reflected in the rule, should not be contained solely in a pre-decisional deliberative document. However, in unusual cases, a pre-decisional deliberative document (such as an internal memo or a document labeled "draft") may be the only available document that contains factual information forming the basis of a final decision or that provides a necessary justification for a policy decision. If you believe that this may be the case, you should consult with your OGC or ORC attorney and your

management before proceeding. In such cases, it is highly preferred that the pre-decisional deliberative material be redacted from the document, and the redacted document be placed in the docket without the pre-decisional deliberative material. If the pre-decisional deliberative material cannot be redacted, you should write a separate document to record the information for the docket rather than docketing a document that is deliberative in nature. If the pre-decisional deliberative material cannot be redacted and you are unable to write a separate document, and you therefore need to place in the docket a document containing pre-decisional deliberative material, you may want to attach a cover note explaining its relevance.

16. How are internal comments for a rulemaking handled?

Internal comments on a rulemaking from EPA offices or Regions are generally considered internal agency documents, not public comments. They should be sent directly to the appropriate EPA contact rather than to a public docket. As indicated above if these documents contain factual information relied on by EPA, that information should be segregated or recorded in a separate document for placement in the docket.

Informal staff notes, such as those taken by EPA staff at a meeting, generally are not included in the docket unless they contain information relevant to the decision that is not contained in other documents. A succinct 'Note to Docket' from the project manager, or appropriate supervisor is a good way to capture information from meetings, telephone calls, and other contacts with outside parties, rather than relying on informal staff notes.

17. What about comments from other federal agencies?

Pre-decisional deliberative documents shared between EPA and other federal agencies generally should not be docketed unless a statute, regulation, or Executive Order directs the agency to include these materials in the docket. See Question 10, above, for a discussion of these provisions. If a document that is deliberative in nature contains relevant information relied on by the agency, that information should be recorded in a separate document for the docket.

In some circumstances, the docket may receive communications from another federal agency that were not intended as public comments, but rather as pre-decisional and deliberative, interagency communications. If the comment was intended to be pre-decisional and deliberative, it should be excluded or withdrawn from the docket and redirected to the appropriate EPA office. If the other agency's intent was to submit a public comment to the docket, the communication should be included in the docket as a public comment. You may, however, want to contact that agency in order to ensure that it did not inadvertently include any pre-decisional deliberative material in its comments.

18. How do I treat documents that are protected by statute?

Materials whose disclosure is protected by statute generally should not be included in the docket. You should consult your OGC or ORC attorney before placing such materials in the docket. Documents containing confidential business information (CBI) and other materials whose disclosure is protected by statute should be listed in the index to the docket, but the protected materials should not be placed in the docket. For documents containing CBI only in part, a redacted version of the document (the non-CBI portions) may be placed in the docket.

19. What is the relationship between the supporting documents created for the final rule and those created for the proposed rule?

Under section 553 of the Administrative Procedure Act (APA), a proposed rule must provide notice to the public that is sufficient to inform them of either the substance of the proposed rule or the subjects and issues under consideration by the agency. The proposed rule *Federal Register* notice together with supporting documents included in the docket should provide sufficient detail and rationale to permit interested parties to comment meaningfully. Note that CAA § 307(d) and TSCA § 411 contain specific requirements for proposals.

Supporting documents for the final rule include the materials that the agency directly or indirectly considered in making the decision, including the supporting documents for the proposed rule and the additional documents considered after the proposal. If portions of a final supporting document supersede statements in a supporting document created for the proposed rule, the final supporting document should make clear which positions have been changed or updated.

20. What is an administrative record?

A docket and an administrative record are not necessarily the same. See EPA's *Administrative Records Guidance, October 2011* (<http://intranet.epa.gov/adplibrary/adp-milestones/drafting.htm#record>).

21. Why is the administrative record important?

See EPA's *Administrative Records Guidance, October 2011* (<http://intranet.epa.gov/adplibrary/adp-milestones/drafting.htm#record>).

22. What is the relationship between the docket and the administrative record?

In general, EPA's policy is to place in the docket the materials that provide the basis for the agency's decision. In turn, the documents that provide the basis for the agency's final decision are those that would be included in the "administrative record." Accordingly, your docket generally should contain documents that would be included in the administrative record. A docket and an administrative record are not necessarily the same, though. See EPA's *Administrative Records Guidance, October 2011* for more information (<http://intranet.epa.gov/adplibrary/adp-milestones/drafting.htm#record>).

23. Will a docket and administrative record have the same sets of documents?

Unless a statute or regulation provides otherwise, the docket and the administrative record may contain slightly different sets of documents. Under some circumstances, some of the documents placed in the docket would not be included in the administrative record. For example, if the docket contains late comments received after the comment period, the administrative record should only include late comments if EPA considered the late comments.

24. When would a document be excluded from the administrative record, but remain in the docket?

Although generally included in the docket, E.O. 12866 materials documenting inter-agency review discussed in response to Question 10 are not included in the administrative record because these materials are considered pre-decisional and deliberative. CAA § 307(d)(7)(A) and

TSCA § 411(e) specifically exclude interagency review materials from the administrative record for actions subject to these provisions.

25. What is an example of a document that may be in the administrative record and excluded from the docket?

Under most EPA statutes, the administrative record may include documents that the decision-maker relied on in making the final decision, even if the documents were not physically placed in the docket at the time the rule document was signed. For example, a report cited in a final rule preamble and relied on by the decision-maker may be part of the administrative record even if it was not placed in the docket. In contrast, certain specific administrative record requirements apply to actions under CAA § 307(d) and TSCA § 411. Under these statutory provisions, the promulgated rule may not be based on any information which has not been placed in the docket. Generally, this means, that as of the date the final rule is signed, all materials that make up the administrative record for a rule issued under CAA § 307(d) or TSCA § 411 must be placed in the docket. See EPA's *Administrative Records Guidance, October 2011* for more information (<http://intranet.epa.gov/adplibrary/adp-milestones/drafting.htm#record>).

26. When are documents required to be in the docket?

The timing of placement of documents in the docket depends on the statutory authority under which the rule is being promulgated. While rules that are promulgated under section 307(d) of the Clean Air Act or 411 of the Toxic Substances Control Act have very specific docketing requirements, rules promulgated under other statutory authority have few docketing requirements.

- Statutory Requirements
 - CAA 307(d) and TSCA 411 rules: For proposed rules, all information and data upon which the proposed rule relies must be placed in the docket by the date of publication of the proposal. For final rules promulgated under these authorities, **all** information or data upon which the rule is based, in whole or in part, must be in the docket as of the date of promulgation. Consult with your OGC attorney to determine the “date of publication” or the “date of promulgation” for your rule.
 - Other rules: Generally, for other rules the only statutory docketing requirement is found in section 206 of the E-Government Act of 2002, which requires agencies to “ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings conducted under section 553 of the APA. Those electronic dockets must include all public comments submitted during the public comment period and other materials that the agency either by rule or practice includes in the rulemaking docket.
 - E.O. 12866: After the regulatory action (ANPRM, NPRM, or the final rule) is published in the *Federal Register*, the EO requires the agency to make the information described in Section 6(a)(3)(E) of the EO available to the public. (See FAQ #10) We do that by placing the information in the rulemaking docket. Although not required by the EO, it is EPA policy to place these documents in the docket prior to publication.

27. Based on the stage of my action, is there a specific time at which my docket should be complete?

Yes, generally, you should follow these guidelines:

- ANPRM: Documents that the public needs to review in order to provide meaningful comments should be placed in the docket by the date the ANPRM is published in the *Federal Register* or soon thereafter.
- NPRM: For CAA 307(d) and TSCA 411 rules, all information and data upon which the proposed rules relies must be placed in the docket by the date of publication of the proposal. Consult your OGC attorney to determine the “date of publication” for your rule. For all other rules, documents that the public needs to review in order to provide meaningful comments should be placed in the docket by the date the NPRM is published in the *Federal Register* or soon thereafter.

Failure to make documents available to the public in a timely manner could result in a challenge to the final rule on the basis that the public was not provided with sufficient information to allow for meaningful comments.

- Final Rules: For rules under CAA 307(d) and TSCA 411, documents and other information that the agency based the rule on must be placed in the docket no later than the date of promulgation.

For other rules, there is no requirement that documents and other information be placed in the docket before promulgation. For all rules, it is important that all documents that the agency considers or relies on in developing the rule, including the response to comments document, be completed prior to signature, even if they are placed in the docket at a later time. This is because we can only include in the administrative record for the rule documents that were in existence at

the time of signature. Documents that are completed after signature cannot be included in the administrative record and, therefore, will not be considered by the court if the rule is challenged.

28. When should I have my administrative record completed?

See EPA's *Administrative Records Guidance, October 2011*

(<http://intranet.epa.gov/adplibrary/adp-milestones/drafting.htm#record>).

29. How do I determine if my docket is complete?

Your docket is complete when every item cited in the *Federal Register* documents associated with the rulemaking is either included or generally accessible to the public in such a way that public notices and access are adequate (such as through widely available publications). Before you exclude cited items from the docket you should check with your OGC or ORC attorney.

30. What are my other responsibilities for my docket?

You should ensure:

- Your docket is in good condition. If submitting paper copies, make sure that pages are not illegible or crooked, since they will be copied. If possible, do not submit loose-leaf or spiral binder items (automatic feeders or copiers do not feed such papers).
- You used the proper formatting for your docket. The preferred format for electronic docket material files is PDF Searchable Image. This type of PDF adds a text layer below the image, enabling full text searchability.

If you believe that changes should be made to a document that has already been made available to the public in a docket, consult your docket staff and OGC or ORC attorney regarding the approval process for revising, removing or replacing the document.

31. How are public comments handled?

Individuals submit public comments on a proposed rulemaking, or other document as discussed in Question 7 under “general dockets” to the EPA Docket Center, either through Regulations.gov or by other methods, such as mail, email, facsimile or hand delivery. Commenters who use Regulations.gov submit their comments online directly to the docket they select. Public comments are received, indexed, and incorporated in the appropriate docket file by EPA Docket Center staff. Comments submitted electronically to the rulewriter directly, instead of the EPA Docket Center, are forwarded to the appropriate docket manager in the EPA Docket Center. Hard copy comments sent to the rulewriter directly are sent via interoffice mail to the Docket Center, or arrangements can be made to pick them up at the EPA Docket Center.

32. How does the public view my “Docket?”

The public can use the Internet to access docket materials available electronically in Regulations.gov. Individuals can also view and copy documents at the EPA Docket Center. For current information on docket location, telephone numbers and hours of operation, go to <http://www.epa.gov/epahome/dockets.htm>.

It is important to include EPA’s procedures regarding access and availability of docket materials in the Supplementary Information section of your *Federal Register* document. Templates for preparing this section of your document can be found in the “Introductory

Templates” and “Non-Rulemaking Notices” sections of this Intranet page:

<http://intranet.epa.gov/adplibrary/adp-templates/>.

33. Where can I get more information on docketing?

For more information on how to create your docket, please visit the FDMS information website: <http://intranet.epa.gov/fdmsinfo>. If you need information on a docket already created and to which you have access you may visit: <http://www.fdms.gov>. For information on all publicly available dockets, you may visit: <http://www.regulations.gov>.

If you have specific questions on this guidance and the information contained here, you may consult your program office RSC representative or RRC, your OGC or ORC attorney, or your Program Desk Officer in the Regulatory Management Division of EPA’s Office of Policy. For a list of these contacts, you may visit the Action Development Process Library website: <http://intranet.epa.gov/adplibrary/contacts/>.

To: Brown, Byron[brown.byron@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]
From: Bodine, Susan
Sent: Fri 12/1/2017 4:56:11 PM
Subject: RE: ACTION: draft communication materials re: 108(b) hardrock mining announcement

I don't plan to review –looks like Byron has got it.

From: Brown, Byron
Sent: Friday, December 1, 2017 11:22 AM
To: Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: ACTION: draft communication materials re: 108(b) hardrock mining announcement

Here are edits to two of the documents – desk statement and comms plan. I have not yet reviewed the content for the website update.

From: Darwin, Veronica
Sent: Friday, December 1, 2017 11:20 AM
To: Brown, Byron <brown.byron@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: ACTION: draft communication materials re: 108(b) hardrock mining announcement

Do you have edits on the comm materials? Thank you.

Veronica

From: Darwin, Veronica

Sent: Thursday, November 30, 2017 5:51 PM

To: Brown, Byron <brown.byron@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>

Subject: FW: ACTION: draft communication materials re: 108(b) hardrock mining announcement

Do you want to review OLEM's draft desk statement, communications plan, and webpage updates before they submit them to OPA? I updated the desk statement and CP to align with the press release; I added the rule summary from the rule package to the web page update.

Thanks,

Veronica

From: Grantham, Nancy

Sent: Thursday, November 30, 2017 2:33 PM

To: Darwin, Veronica <darwin.veronica@epa.gov>; Konkus, John <konkus.john@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>

Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: Fwd: ACTION: draft communication materials re: 108(b) hardrock mining announcement

Hi - since this is tomorrow- am resending - Veronica said that she would coordinate review by Byron, David f and others

Thx ng

Sent from my iPhone

Begin forwarded message:

From: "Cohen, Nancy" <Cohen.Nancy@epa.gov>

Date: November 29, 2017 at 12:29:27 PM EST

To: "Darwin, Veronica" <darwin.veronica@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>

Cc: "Breen, Barry" <Breen.Barry@epa.gov>, "Simon, Nigel" <Simon.Nigel@epa.gov>,

"Brooks, Becky" <Brooks.Becky@epa.gov>, "Hilosky, Nick" <Hilosky.Nick@epa.gov>, "Harwood, Jackie" <Harwood.Jackie@epa.gov>, "Lowery, Brigid" <Lowery.Brigid@epa.gov>, "Benjamin, Kent" <Benjamin.Kent@epa.gov>

Subject: FW: ACTION: draft communication materials re: 108(b) hardrock mining announcement

Veronica/Nancy G: draft communication materials for the 108b announcement are attached for your review. Veronica, the other day you mentioned having a meeting with leadership to finalize. Thanks for keeping us in the loop, nancy c

To: Sasseville, Sonya[Sasseville.Sonya@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Noggle, William[Noggle.William@epa.gov]; Johnson, Barnes[Johnson.Barnes@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Michaud, John[Michaud.John@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]; Hostage, Barbara[Hostage.Barbara@epa.gov]; Cogliano, Gerain[Cogliano.Gerain@epa.gov]; Mattick, Richard[Mattick.Richard@epa.gov]; Farber, Glenn[Farber.Glenn@epa.gov]; Hilosky, Nick[Hilosky.Nick@epa.gov]; Brooks, Becky[Brooks.Becky@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]; Lewis, Jen[Lewis.Jen@epa.gov]; Foster, Barbara[Foster.Barbara@epa.gov]; Huggins, Richard[Huggins.Richard@epa.gov]
From: Bodine, Susan
Sent: Thur 11/30/2017 6:44:10 PM
Subject: RE: DUE Nov 30th by noon - Final Review of 108b rule

Can add **Ex. 5 - Attorney Client**

Ex. 5 - Attorney Client

From: Sasseville, Sonya
Sent: Thursday, November 30, 2017 1:41 PM
To: Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>
Subject: RE: DUE Nov 30th by noon - Final Review of 108b rule

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

[1] 82 FR 3402-03

82 FR 3456

...

EPA has described in the following sections the basis for determining that exploration mines, placer mines, small surface mines of less than five acres, and mineral processors with less than five acres of surface impoundment and waste pile disturbance present a lower

level of risk of injury....

From: Stachowiak, Robert

Sent: Thursday, November 30, 2017 12:49 PM

To: Noggle, William <Noggle.William@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>

Subject: RE: DUE Nov 30th by noon - Final Review of 108b rule

Attorney-client communication

Deliberative process privileged

A few additional comments from me.

-R

Robert Stachowiak
U.S. Environmental Protection Agency
Office of General Counsel (2366A)
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
(202) 564-0580

From: Noggle, William

Sent: Wednesday, November 29, 2017 8:10 PM

To: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>

Subject: DUE Nov 30th by noon - Final Review of 108b rule

To all –

By noon tomorrow (Thursday, Nov 30th), please review the attached version of the rule, which addresses the final round of comments from interagency reviewers. The redline version shows changes from the previous version sent to OMB on Nov 27th. If you have edits, please make them to the clean version and send to Barbara and me.

This is the final EPA review before we conclude OMB review.

Please note there are still some items being addressed:

- Fixing footnotes

-

Ex. 5 - Deliberative Process

Thanks,

Bill

202-566-1306

[1] 82 FR 3456-59; Hoffman Memo, “Mining Classes Not Included in Identified Classes of Hardrock Mining,” June 2009. See 82 FR 3455 n. 145. EPA solicited comments on whether to identify additional exclusions based on a finding of minimal risk, citing iron ore, phosphates and uranium mines as examples. 82 FR 3456.

[2] 82 FR 3402-03

[3] Proposed 40 CFR 320.63.

[4] Proposed 40 CFR 320.27.

To: Brown, Byron[brown.byron@epa.gov]
From: Bodine, Susan
Sent: Thur 11/30/2017 1:15:46 PM
Subject: FW: Cercla 108-TSD Case Studies-AO Edits-112917- 1129 _SBA_ Edits.docx
Cercla 108-TSD Case Studies-AO Edits-112917- 1129 _SBA_ Edits.docx

Did you get this?

From: Bromberg, Kevin L. [mailto:kevin.bromberg@sba.gov]
Sent: Wednesday, November 29, 2017 6:30 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: FW: Cercla 108-TSD Case Studies-AO Edits-112917- 1129 _SBA_ Edits.docx

Please **Ex. 5 - Deliberative Process**

Danielle Jones should be forwarding. Pablo has no laptop to forward documents at night.

Kevin

From: Bromberg, Kevin L.
Sent: Wednesday, November 29, 2017 6:28 PM
To: Rojas, Pablo EOP/OMB (Intern) **Ex. 6 - Personal Privacy**, **Ex. 6 - Personal Privacy**
DeBruhl, Brandon F. EOP/OMB (**Ex. 6 - Personal Privacy**)
Cc: McManus, Michael J.; Maresca, Charles A. **Ex. 6 - Personal Privacy**
Subject: Cercla 108-TSD Case Studies-AO Edits-112917- 1129 _SBA_ Edits.docx

Ex. 5 - Deliberative Process

Kevin

To: Noggle, William[Noggle.William@epa.gov]; Sasseville, Sonya[Sasseville.Sonya@epa.gov]; Johnson, Barnes[Johnson.Barnes@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Michaud, John[Michaud.John@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]; Hostage, Barbara[Hostage.Barbara@epa.gov]; Cogliano, Gerain[Cogliano.Gerain@epa.gov]; Mattick, Richard[Mattick.Richard@epa.gov]; Farber, Glenn[Farber.Glenn@epa.gov]; Hilosky, Nick[Hilosky.Nick@epa.gov]; Brooks, Becky[Brooks.Becky@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]; Lewis, Jen[Lewis.Jen@epa.gov]; Foster, Barbara[Foster.Barbara@epa.gov]; Huggins, Richard[Huggins.Richard@epa.gov]
From: Bodine, Susan
Sent: Thur 11/30/2017 4:13:15 PM
Subject: RE: DUE Nov 30th by noon - Final Review of 108b rule
[CLEAN 108b Final Rule Nov 29 2017 spb edits.docx](#)

There are a lot of footnotes missing still. Also, **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

Also, who does the formatting fixes?

From: Noggle, William
Sent: Wednesday, November 29, 2017 8:10 PM
To: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>
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- Fixing footnotes

- **Ex. 5 - Deliberative Process**

Thanks,

Bill

202-566-1306

To: Darwin, Veronica[darwin.veronica@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Bodine, Susan
Sent: Wed 11/29/2017 10:57:26 PM
Subject: RE: risk of fund payment insert

Ex. 5 - Deliberative Process

-----Original Message-----

From: Darwin, Veronica
Sent: Wednesday, November 29, 2017 5:55 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: RE: risk of fund payment insert

Ex. 5 - Deliberative Process

Veronica

-----Original Message-----

From: Bodine, Susan
Sent: Wednesday, November 29, 2017 3:43 PM
To: Darwin, Veronica <darwin.veronica@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: RE: risk of fund payment insert

Sure. Call me at Ex. 6 - Personal Privacy

Ex. 5 - Deliberative Process

-----Original Message-----

From: Darwin, Veronica
Sent: Wednesday, November 29, 2017 3:28 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: RE: risk of fund payment insert

I hate to do this when we are so close... but do you have a few minutes to discuss the number of sites in your fund payment write-up? Here is the breakdown:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

I gotta run to a meeting but will be available after 5 if you wish to meet to discuss.

Veronica

-----Original Message-----

From: Bodine, Susan

Sent: Wednesday, November 29, 2017 2:06 PM

To: Brown, Byron <brown.byron@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: risk of fund payment insert

Ex. 5 - Attorney Client

I used some information provided by Kevin that needs to be added to the docket and sources. They are highlighted in yellow.

-----Original Message-----

From: Brown, Byron

Sent: Wednesday, November 29, 2017 11:34 AM

To: Bodine, Susan <bodine.susan@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: RE: Edits

Bill -- I saw that there are a number of footnotes missing citations especially toward the end. Let me know if folks need help tracking them down and plugging them in.

-----Original Message-----

From: Bodine, Susan

Sent: Wednesday, November 29, 2017 10:37 AM

To: Noggle, William <Noggle.William@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: Edits

These are my edits to all but the section discussing payments from the Fund, which I will provide in a separate document since I wanted to get these to you right away so OGC can review.

I edited the sections up front to incorporate comments from the call and

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

I did not address sections where other people have been taking the lead.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

This reflects my notes on DOJ's comments, but I did not incorporate them.

-----Original Message-----

From: Noggle, William

Sent: Wednesday, November 29, 2017 9:34 AM

To: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: 108(b) - interagency review - 12-category crosswalks

To all -

Below is the info from Kevin on the state programs. Are we including this in the rule? If so, who has the lead on incorporating?

Thanks,
Bill

-----Original Message-----

From: Rojas, Pablo EOP/OMB (Intern) [mailto: Ex. 6 - Personal Privacy

Sent: Wednesday, November 29, 2017 9:21 AM

To: Noggle, William <Noggle.William@epa.gov>

Subject: Additional comments: 12-category crosswalks

Bill - see below (from Kevin).

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

To: Brown, Byron[brown.byron@epa.gov]; Noggle, William[Noggle.William@epa.gov]; Sasseville, Sonya[Sasseville.Sonya@epa.gov]; Foster, Barbara[Foster.Barbara@epa.gov]; Johnson, Barnes[Johnson.Barnes@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Michaud, John[Michaud.John@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]; Hostage, Barbara[Hostage.Barbara@epa.gov]; Cogliano, Gerain[Cogliano.Gerain@epa.gov]; Mattick, Richard[Mattick.Richard@epa.gov]; Farber, Glenn[Farber.Glenn@epa.gov]
From: Bodine, Susan
Sent: Wed 11/29/2017 7:06:24 PM
Subject: risk of fund payment insert
[payments from the Fund Insert.docx](#)

Ex. 5 - Attorney Client

I used some information provided by Kevin that needs to be added to the docket and sources. They are highlighted in yellow.

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From: Brown, Byron
Sent: Wednesday, November 29, 2017 11:34 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>
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Sent: Wednesday, November 29, 2017 9:34 AM

To: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Coglian, Gerain <Coglian.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>

Subject: 108(b) - interagency review - 12-category crosswalks

To all -

Below is the info from Kevin on the state programs. Are we including this in the rule? If so, who has the lead on incorporating?

Thanks,

Bill

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From: Rojas, Pablo EOP/OMB (Intern) [mailto:**Ex. 6 - Personal Privacy**]

Sent: Wednesday, November 29, 2017 9:21 AM

To: Noggle, William <Noggle.William@epa.gov>

Subject: Additional comments: 12-category crosswalks

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Ex. 5 - Deliberative Process

To: Noggle, William[Noggle.William@epa.gov]; Sasseville, Sonya[Sasseville.Sonya@epa.gov]; Foster, Barbara[Foster.Barbara@epa.gov]; Johnson, Barnes[Johnson.Barnes@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Michaud, John[Michaud.John@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]; Hostage, Barbara[Hostage.Barbara@epa.gov]; Cogliano, Gerain[Cogliano.Gerain@epa.gov]; Mattick, Richard[Mattick.Richard@epa.gov]; Farber, Glenn[Farber.Glenn@epa.gov]
From: Bodine, Susan
Sent: Wed 11/29/2017 3:37:08 PM
Subject: Edits
CLEAN 108b Final Rule Nov 27 2017 spb edits.docx

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Subject: 108(b) - interagency review - 12-category crosswalks

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Sent: Wednesday, November 29, 2017 9:21 AM

To: Noggle, William <Noggle.William@epa.gov>

Subject: Additional comments: 12-category crosswalks

Bill - see below (from Kevin).

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

To: DeLeon, Rafael[DeLeon.Rafael@epa.gov]
Cc: Starfield, Lawrence[Starfield.Lawrence@epa.gov]
From: Bodine, Susan
Sent: Thur 10/12/2017 10:12:41 PM
Subject: RE: 108 (b) Briefing

Ex. 5 - Attorney Client

From: DeLeon, Rafael
Sent: Thursday, October 12, 2017 4:02 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: 108 (b) Briefing

Susan

I want to make sure that we are on the same page. You read our weekly summary

Ex. 5 - Attorney Client

Were you expecting a briefing before then? FYI, OSRE has its bi-weekly with you next week (Thursday, 10/19), where we were also going to give you a quick overview of what we were expecting/concerns. Please advise. Thanks.

****ENFORCEMENT CONFIDENTIAL****

CERCLA 108(b) Update on Hardrock Mining Financial Assurance Final Action

Ex. 5 - Attorney Client

hardrock mines.

Ex. 5 - Attorney Client

Rafael DeLeon, Esq.

Deputy Director

EPA-Office of Enforcement and Compliance Assurance

Office of Site Remediation Enforcement (Mail Code-2271A)

1200 Pennsylvania Ave., N.W. (Room-WJC 5206)

Washington, DC 20460

202 564-5110 (Office Line)

202 564-4899 (Direct Line)

202 302-2761 (Office Cell)

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

To: Noggle, William[Noggle.William@epa.gov]; Sasseville, Sonya[Sasseville.Sonya@epa.gov]; Foster, Barbara[Foster.Barbara@epa.gov]; Johnson, Barnes[Johnson.Barnes@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Michaud, John[Michaud.John@epa.gov]; Stachowiak, Robert[Stachowiak.Robert@epa.gov]; Darwin, Veronica[darwin.veronica@epa.gov]; Hostage, Barbara[Hostage.Barbara@epa.gov]; Cogliano, Gerain[Cogliano.Gerain@epa.gov]; Mattick, Richard[Mattick.Richard@epa.gov]; Farber, Glenn[Farber.Glenn@epa.gov]
From: Bodine, Susan
Sent: Wed 11/29/2017 2:34:32 PM
Subject: RE: 108(b) - interagency review - 12-category crosswalks

I will put it in, it is in a section I am working on anyway.

-----Original Message-----

From: Noggle, William
Sent: Wednesday, November 29, 2017 9:34 AM
To: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Foster, Barbara <Foster.Barbara@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Darwin, Veronica <darwin.veronica@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Mattick, Richard <Mattick.Richard@epa.gov>; Farber, Glenn <Farber.Glenn@epa.gov>
Subject: 108(b) - interagency review - 12-category crosswalks

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-----Original Message-----

From: Rojas, Pablo EOP/OMB (Intern) [mailto:pablo.rojas@epa.gov] **Ex. 6 - Personal Privacy**
Sent: Wednesday, November 29, 2017 9:21 AM
To: Noggle, William <Noggle.William@epa.gov>
Subject: Additional comments: 12-category crosswalks

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

To: Davis, Patrick[davis.patrick@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]
From: Bodine, Susan
Sent: Tue 10/3/2017 10:24:27 PM
Subject: RE: EPCRA Q&A
Routine Agricultural Operations -QA DRAFT 10-2-17 v.1.docx

Ex. 5 - Attorney Client

-----Original Message-----

From: Davis, Patrick
Sent: Tuesday, October 3, 2017 4:33 PM
To: Brown, Byron <brown.byron@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: FW: EPCRA Q&A

EPCRA Q&A for our thoughts.

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
202-380-8341 cell

Information sent to this email address may be subject to FOIA.

-----Original Message-----

From: Jennings, Kim
Sent: Tuesday, October 3, 2017 4:01 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>
Cc: Jacob, Sicy <Jacob.Sicy@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Hull, George <Hull.George@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>
Subject: FW: EPCRA Q&A

FYI. I wanted to get this out to folks ASAP since we have the meeting with OGC on Thursday on this Q and A.

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office of Emergency Management

E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----

From: Michaud, John

Sent: Tuesday, October 03, 2017 3:01 PM

To: Jennings, Kim <Jennings.Kim@epa.gov>

Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Swenson, Erik <Swenson.Erik@epa.gov>; Salo, Earl <Salo.Earl@epa.gov>; Openchowski, Charles <openchowski.charles@epa.gov>

Subject: EPCRA Q&A

Kim --

Ex. 5 - Deliberative Process

Let me know if you have any questions.

Thanks.

John

John R Michaud

Associate General Counsel

Solid Waste and Emergency Response Law Office

202-564-5518

michaud.john@epa.gov

-----Original Message-----

From: Jennings, Kim

Sent: Tuesday, October 03, 2017 7:50 AM

To: Michaud, John <Michaud.John@epa.gov>

Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>

Subject: RE:

Hi John,

Is the EPCRA Q & A complete? Can you send it to us?

Our AA is asking and we have a briefing scheduled with OMB on Thursday on this and the guidance.

Thanks,

Kim

Kim Jennings

Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office of Emergency Management

E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----

From: Jennings, Kim

Sent: Friday, September 29, 2017 6:47 AM

To: Michaud, John <Michaud.John@epa.gov>

Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>

Subject: FW:

Hi John,

For your awareness see email chain below. Ryan Jackson is requesting information on the Ag CERCLA

Ex. 5 - Deliberative Process

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office
of Emergency Management
E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----

From: Jennings, Kim
Sent: Friday, September 29, 2017 6:42 AM
To: Cheatham, Reggie <cheatham.reggie@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Cc: Clark, Becki <Clark.Beki@epa.gov>
Subject:

Hi Reggie and Becki,

Ex. 5 - Deliberative Process

Let me know if you have any questions or want to discuss. I am in the office today.

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office
of Emergency Management
E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----

From: Cheatham, Reggie
Sent: Thursday, September 28, 2017 6:09 PM
To: Jennings, Kim <Jennings.Kim@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Cc: Clark, Becki <Clark.Beki@epa.gov>
Subject: FW:

I saw the draft....where are we on going final?

Reggie Cheatham, Director
Office of Emergency Management, USEPA
202.564.8003 (O); 202.689.9400 (M);
cheatham.reggie@epa.gov

Doris Williams, Executive Assistant
202.564.0053

-----Original Message-----

From: Breen, Barry
Sent: Thursday, September 28, 2017 6:06 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>
Subject: FW:

Patrick, do you already have the substance needed for us to get back to Ryan?

If not, Reggie, would you please ask Kim to draft a reply?

Barry

-----Original Message-----

From: Jackson, Ryan
Sent: Thursday, September 28, 2017 5:54 PM
To: Cheatham, Reggie <cheatham.reggie@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>
Subject:

Gentlemen, I know OLEM is working on it but I'm looking for an update on the ag cercla/Epra reporting exemption. I need to get this out and know the schedule.

Also the Epra Q&A and guidance **Ex. 5 - Attorney Client** When are these documents ready to go?

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6 - Personal Privacy

To: Davis, Patrick[davis.patrick@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
Cc: Bennett, Tate[Bennett.Tate@epa.gov]
From: Bodine, Susan
Sent: Tue 10/3/2017 4:32:28 PM
Subject: RE: For OLEM IO and OGC Review: CERCLA/EPCRA website for agriculture

I can't make the check in meeting tomorrow.

I did have some questions.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

From: Davis, Patrick
Sent: Monday, October 2, 2017 4:58 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Cc: Bennett, Tate <Bennett.Tate@epa.gov>
Subject: FW: For OLEM IO and OGC Review: CERCLA/EPCRA website for agriculture
Importance: High

First look at CERCLA/EPCRA reporting guidance document. Your thoughts are appreciated.

I will share this with Farm Bureau on Tuesday for their input.

Thanks,

Patrick Davis

Environmental Protection Agency

Deputy Assistant Administrator, Office of Land and Emergency Management

202-564-3103 office

202-380-8341 cell

Information sent to this email address may be subject to FOIA.

From: Gioffre, Patricia

Sent: Monday, October 2, 2017 4:00 PM

To: Davis, Patrick <davis.patrick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Swenson, Erik <Swenson.Erik@epa.gov>; Salo, Earl <Salo.Earl@epa.gov>

Cc: Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Hull, George <Hull.George@epa.gov>; Mayer, Eileen <Mayer.Eileen@epa.gov>

Subject: For OLEM IO and OGC Review: CERCLA/EPCRA website for agriculture

Importance: High

Attached is a draft of the information to be added to the EPA website on CERCLA/EPCRA reporting (i.e., the CERCLA “guidance”).

I am requesting that OGC review this text simultaneously with the OLEM IO to expedite review. Note-Our web specialist still needs to format the text to meet agency website formatting requirements. That may change the appearance of the information but will not change the substance.

Please respond with any revisions at your earliest convenience.

Feel free to contact Kim Jennings (202-564-7998) or me with any questions.

Best wishes!

Patty Gioffre

Acting Deputy Division Director

USEPA (OLEM/OEM/RID)

1200 Pennsylvania Ave. NW (5104A)

Washington, DC 20460

202-564-1972

202-748-7139 (cell)

To: Fugh, Justina[Fugh.Justina@epa.gov]
From: Bodine, Susan
Sent: Wed 11/8/2017 1:54:52 PM
Subject: RE: EPA - Consent Decree - request for meeting - Nov 3-2017.pdf

Thank you Justina.

I have decided to not participate in this meeting. Mark Pollins will handle it at his level.

Ex. 5 - Attorney Client

From: Fugh, Justina
Sent: Tuesday, November 7, 2017 6:42 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: EPA - Consent Decree - request for meeting - Nov 3-2017.pdf

Hi Susan,

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Bodine, Susan
Sent: Tuesday, November 07, 2017 8:52 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: EPA - Consent Decree - request for meeting - Nov 3-2017.pdf

New question.

Ex. 5 - Attorney Client

Is that correct?

From: Traylor, Patrick
Sent: Monday, November 6, 2017 2:59 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: FW: EPA - Consent Decree - request for meeting - Nov 3-2017.pdf

Susan, would you like to take the advisory lead on this Evansville matter? If so, I'll send Sarah to you.

Patrick Traylor

Deputy Assistant Administrator

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

(202) 564-5238 (office)

(202) 809-8796 (cell)

From: Greenwalt, Sarah
Sent: Monday, November 6, 2017 2:25 PM
To: Hupp, Millan <hupp.millan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: EPA - Consent Decree - request for meeting - Nov 3-2017.pdf

Thank you Millan. Patrick, please let me know if you have a few minutes to discuss.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Hupp, Millan

Sent: Monday, November 6, 2017 2:11 PM

To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Subject: FW: EPA - Consent Decree - request for meeting - Nov 3-2017.pdf

Good afternoon.

This letter came into me this morning. Looks like it falls within each of your peripheries.

Please let me know if you need anything further from me on this.

Thank you,

Millan Hupp

Director of Scheduling and Advance

Office of the Administrator

Cell: 202.380.7561 Email: hupp.millan@epa.gov

From: Millan Hupp [<mailto:millan.hupp@gmail.com>]

Sent: Monday, November 6, 2017 1:09 PM

To: Hupp, Millan <hupp.millan@epa.gov>

Subject: EPA - Consent Decree - request for meeting - Nov 3-2017.pdf

Millan Hupp

To: Wehrum, Bill[Wehrum.Bill@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov];
Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Tue 12/5/2017 10:10:09 PM
Subject: reminder meeting with SP on Friday

The subject is related to what constitutes “routine maintenance” and replacement of cyclone.

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Bodine, Susan
Sent: Wed 12/6/2017 10:56:29 PM
Subject: OECA comments
NSR policy memo draft 2017 12 2 edits (OECA Edits December 6 2017).docx

Mandy,

Attached are comments from Patrick and myself. They track our discussion yesterday. In addition, although not reflected in the attached redline, we recommend that

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Susan

To: Woolford, James[Woolford.James@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]; Kelly, Albert[kelly.albert@epa.gov]
Cc: Hilosky, Nick[Hilosky.Nick@epa.gov]
From: Bodine, Susan
Sent: Fri 11/17/2017 3:20:51 PM
Subject: RE: GM Massena ROD and Tribal ARARs
rod_alcoa_4-2013.pdf

I was looking at the 2013 ROD for Grasse River:

EPA and the SRMT have extensively discussed, on a government-to-government basis, whether to apply the SRMT's sediment cleanup standard for PCBs (0.1 mg/kg) as "relevant and appropriate" or "to be considered" for the cleanup. As noted above, the United States maintains

that land reserved to the SRMT by the 1796 Treaty includes the Indian Meadows along the banks of the lower Grasse River, and EPA, of course, subscribes to the United States' position regarding the Indian Meadows. The status of the lands reserved by the 1796 Treaty is currently in dispute. See Canadian St. Regis Band of Mohawk Indians v. State of New York, et al., 5:82-cv-783 (N.D.N.Y.).

EPA evaluated the SRMT sediment standard as a "to-be-considered" requirement for the Grasse River cleanup. EPA's decision to evaluate the SRMT standard as a TBC was solely for purposes of developing the remedy, and was unrelated to the status of the SRMT's land claim.

The SRMT sediment standard was considered when EPA established a remediation goal for PCBs in fish that is protective of Mohawk health, although it is not being adopted as the cleanup standard for the sediment. EPA notes that the SRMT cleanup standard is significantly lower than EPA's action levels for sediment cleanup (i.e., >1 mg/kg PCB surface or SLWA concentration) in this Record of Decision, and analyses performed by Alcoa at EPA's request and included in the administrative record concluded that it is not technically practicable to achieve the SRMT's sediment cleanup level of 0.1 mg/kg.

From: Woolford, James
Sent: Friday, November 17, 2017 9:45 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Kelly, Albert <kelly.albert@epa.gov>
Cc: Hilosky, Nick <Hilosky.Nick@epa.gov>
Subject: GM Massena ROD and Tribal ARARs

Per our discussion yesterday -

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

The 1990 ROD and subsequent 1999 ROD Amendment identify the St. Regis Mohawk Tribe Requirements as an ARAR not as TBC – but only on Tribal Lands. In fact we identify as an ARAR and state we will waive where not technically practicable – see below

1990 ROD - See page 19 3rd pp, page 21 1st pp, page 33 “EPA intends to comply with the Tribal PCB ARAR by removing...” See as well Table 7 listing Tribal standards and Table 13 identifying ARARs

From section of ROD discussing ARARs

During dredging, EPA will attempt to meet the Tribal PCB ARAR of 0.1 ppm PCBs in Turtle Creek. However, based on limited previous experience at other Superfund sites and federal projects, dredging to 0.1 ppm PCBs may be technically impracticable. Therefore, EPA is waiving the Tribal sediment standard where it proves to be technically impracticable to achieve during dredging, as discussed in CERCLA, section 121(d)(4)(C). EPA will consult with the St. Regis Mohawk Tribe and NYSDEC before making a final determination as to the technical impracticability of meeting the tribal sediment PCB ARAR. EPA will base its determination on the results of dredging conducted in Turtle Creek.

From TABLE 13 –

TABLE 13

MAJOR APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS, AMONG OTHERS,
ASSOCIATED WITH THE SELECTED REMEDY

Chemical-Specific ARARs

- Safe Drinking Water Act

Maximum Contaminant Level (MCL) for trichloroethylene and vinyl chloride

- St. Regis Mohawk Tribe Requirements

PCB cleanup levels in soil, sediment, air, water, and groundwater

- Clean Air Act

National Ambient Air Quality Standards at 40 CFR Part 50

- New York State Requirements

Groundwater regulations at 6 NYCRR Part 703

Surface water regulations at 6 NYCRR Part 701, including Appendix 31

Air quality standards at 6 NYCRR Part 257

1999 ROD Amendment – see pages 2 and 14 as well as response to comments page 20 ff – page 21 – “As described in the OUI ROD, Tribal ARARs apply to remedial work performed on tribal

lands including Turtle Creek and Tribal soils....”

On the Eastern Michaud Flats/FMC 2010 Interim ROD – **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

Jim Woolford, Director

Office of Superfund Remediation and Technology Innovation

Office of Land and Emergency Management

US Environmental Protection Agency

1200 Penn. Ave., NW

Washington, DC 20460

(Mail Code 5201-P)

Our mission is to return the most contaminated areas of country to communities for safe reuse in a healthy environment.

Phone: (703) 603 8960– Main Office Line

Physically located at:

Room 5622

One Potomac Yard (South)
2777 S. Crystal Dr.
Arlington, VA 22202



To: Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov];
Traylor, Patrick[traylor.patrick@epa.gov]
Cc: DeLeon, Rafael[Deleon.Rafael@epa.gov]
From: Bodine, Susan
Sent: Mon 10/30/2017 8:45:39 PM
Subject: RE: DRAFT - Update on St. Regis (Region 5) Tribal ARAR Matter
rod_alcoa_4-2013.pdf

Have you looked at

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

From: Mackey, Cyndy

Sent: Monday, October 30, 2017 12:36 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>; DeLeon, Rafael <Deleon.Rafael@epa.gov>
Subject: FW: DRAFT - Update on St. Regis (Region 5) Tribal ARAR Matter
Importance: High

Internal / Attorney-Client Privileged Communication / Enforcement Confidential

Larry & Patrick:

Tomorrow, the office directors and other managers in OSRE, OSRTI, OGC, and Region 5 are holding a call to discuss the tribal ARAR matter at the St. Regis Superfund Site in Region 5. The purpose of the call is to discuss each office's position and hopefully come to a consensus. The purpose of this email is to confirm your support for the two options set forth in #s 1 and 2 below.

Ex. 5 - Attorney Client

We discussed various options with you and OECA generally supported the following two options. OSRE is supporting both of the below options moving forward, but prefers Option 2:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

As background, I have attached the following briefing materials (that have previously been provided):

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Please let me know if you have any questions.

Thank you,

Cyndy Mackey

Director, Office of Site Remediation Enforcement

EPA-Office of Enforcement and Compliance Assurance (Mail Code-2271A)

1200 Pennsylvania Ave., N.W. (Room-WJC 5206) Washington, DC 20460

202 564-8206 (Direct Line)

202 564-5110 (Office Line)

202 591-6184(Office Cell)

To: Starfield, Lawrence[Starfield.Lawrence@epa.gov]
From: Bodine, Susan
Sent: Tue 10/10/2017 1:57:00 PM
Subject: Fwd: City of Portland Concerns Regarding Proposed Pre-RD Agreement

Sent from my iPhone

Begin forwarded message:

From: "Woolford, James" <Woolford.James@epa.gov>
Date: October 7, 2017 at 4:28:48 PM EDT
To: "Breen, Barry" <Breen.Barry@epa.gov>, "Davis, Patrick" <davis.patrick@epa.gov>, "Kelly, Albert" <kelly.albert@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Opalski, Dan" <Opalski.Dan@epa.gov>, "Pirzadeh, Michelle" <Pirzadeh.Michelle@epa.gov>, "Bilbrey, Sheryl" <Bilbrey.Sheryl@epa.gov>, "Mackey, Cyndy" <Mackey.Cyndy@epa.gov>, "Stalcup, Dana" <Stalcup.Dana@epa.gov>, "Ebright, Stephanie" <EBRIGHT.STEPHANIE@EPA.GOV>, "Fitz-James, Schatzi" <Fitz-James.Schatzi@epa.gov>
Cc: "DeLeon, Rafael" <DeLeon.Rafael@epa.gov>, "Patterson, Kenneth" <Patterson.Kenneth@epa.gov>, "Fonseca, Silvina" <Fonseca.Silvina@epa.gov>
Subject: Fwd: City of Portland Concerns Regarding Proposed Pre-RD Agreement

Sharing with others at HQ

Sent from my iPhone, please excuse spelling errors.
Thanks, Jim.

Begin forwarded message:

From: Commissioner Fish <nick@portlandoregon.gov>
Date: October 7, 2017 at 2:21:33 PM EDT
To: "woolford.james@epa.gov" <woolford.james@epa.gov>, "richard.whitman@state.or.us" <richard.whitman@state.or.us>, "jason.miner@state.or.us" <jason.miner@state.or.us>, "bilbrey.sheryl@epa.gov" <bilbrey.sheryl@epa.gov>, "mackey.cyndy@epa.gov" <mackey.cyndy@epa.gov>, "zhen.davis@epa.gov" <zhen.davis@epa.gov>, "kevin.parrett@state.or.us" <kevin.parrett@state.or.us>
Cc: "Wheeler, Ted" <Ted.Wheeler@portlandoregon.gov>, "Henderson, Maurice" <Maurice.Henderson@portlandoregon.gov>, "Schmanski, Sonia" <Sonia.Schmanski@portlandoregon.gov>
Subject: City of Portland Concerns Regarding Proposed Pre-RD Agreement

Sincerely,

To: Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Patrick Traylor
(traylor.patrick@epa.gov)[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Fri 10/6/2017 9:25:15 PM
Subject: FW: Portland Harbor Draft AOC; sf deliberative

FYI

Ex. 5 - Deliberative Process

From: Opalski, Dan
Sent: Friday, October 6, 2017 5:19 PM
To: Woolford, James <Woolford.James@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>; Kelly, Albert <kelly.albert@epa.gov>; Bilbrey, Sheryl <Bilbrey.Sheryl@epa.gov>; Patterson, Kenneth <Patterson.Kenneth@epa.gov>; Stalcup, Dana <Stalcup.Dana@epa.gov>
Subject: Re: Portland Harbor Draft AOC; sf deliberative

Ex. 5 - Deliberative Process

I have folks working on a press statement should we want/need to have one to use. I will share a draft when available and of course I presume we will work through OPA.

Sent from my iPhone

On Oct 6, 2017, at 1:16 PM, Woolford, James <Woolford.James@epa.gov> wrote:

For your situational awareness. To Barry's line of inquiry earlier today.

Jim Woolford, Director

Office of Superfund Remediation and Technology Innovation

Office of Land and Emergency Management

US Environmental Protection Agency

1200 Penn. Ave., NW

Washington, DC 20460

(Mail Code 5201-P)

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Room 5622

One Potomac Yard (South)
2777 S. Crystal Dr.
Arlington, VA 22202

<image004.gif>

From: Sheldrake, Sean

Sent: Friday, October 06, 2017 3:01 PM

To: Woolford, James <Woolford.James@epa.gov>

Cc: Bilbrey, Sheryl <Bilbrey.Sheryl@epa.gov>; Grandinetti, Cami
<Grandinetti.Cami@epa.gov>

Subject: FW: Portland Harbor Draft AOC; sf deliberative

Jim, Sheryl, Cami, Fyi—trying to get a PIO assigned as Kevin intimated this memo was releasable and/or might be released. DEQ has assigned a PIO with as needed talking points that we should probably request from them in preparing ours.

Thank you.

S

Sean Sheldrake, Unit Diving Officer, RPM

EPA Region 10, 1200 Sixth Ave., Suite 900; Mailstop DOC-01

Seattle, WA 98101

206.553.1220 desk

206.225.6528 cell

<http://yosemite.epa.gov/r10/cleanup.nsf/sites/ptldharbor>

[<image001.png><image002.png><image003.png>](#)

Over 47 years of scientific diving in support of EPA's mission

From: PARRETT Kevin [<mailto:Kevin.Parrett@state.or.us>]

Sent: Friday, October 06, 2017 9:09 AM

To: brandy.humphreys@grandronde.org; callie@ridolfi.com; Chu Rebecca
<Chu.Rebecca@epa.gov>; Scott Coffey <coffeyse@cdmsmith.com>; Sheldrake, Sean
<sheldrake.sean@epa.gov>; Courtney Johnson (courtney@crag.org)
<courtney@crag.org>; dexb@yakamafish-nsn.gov; DeMaria, Eva
<DeMaria.Eva@epa.gov>; Gail Fricano (gfricano@indecon.com)
<gfricano@indecon.com>; Genevieve Angle - NOAA-NMFS (Genevieve.Angle@noaa.gov)
<Genevieve.Angle@noaa.gov>; Gustavson, Karl <Gustavson.Karl@epa.gov>; Holly
Partridge (Holly.Partridge@grandronde.org) <Holly.Partridge@grandronde.org>; Jen
Graham <jennifer.graham@ctwsbnr.org>; Jeremy_Buck@fws.gov; jweis@hk-law.com;
Knudsen, Laura <Knudsen.Laura@epa.gov>; Kristin Callahan <kristin@ridolfi.com>; Lance
Peterson (PetersonLE@cdmsmith.com) <PetersonLE@cdmsmith.com>; Laura Klasner
Shira <shil@yakamafish-nsn.gov>; Matt Johnson - JD Law Umatilla rep.
(MatthewJohnson@ctuir.org) <MatthewJohnson@ctuir.org>; tosm@yakamafish-nsn.gov;
Michael.karnosh@grandronde.org; NaomiStacy@ctuir.org; Rachel DelVecchio
(rdelvecchio@indecon.com) <rdelvecchio@indecon.com>; Rita Cabral
(rcabral@indecon.com) <rcabral@indecon.com>; Robert Brunoe
(robert.brunoe@ctwsbnr.org) <robert.brunoe@ctwsbnr.org>; Robert.Neely@noaa.gov;
rose@yakamafish-nsn.gov; Buerger, Ted <ted_buerger@fws.gov>; tomd@ctsi.nsn.us;
Grandinetti, Cami <Grandinetti.Cami@epa.gov>; Zhen, Davis <Zhen.Davis@epa.gov>
Cc: MCCLINCY Matt <Matt.MCCLINCY@state.or.us>; SEIDEL Paul
<Paul.SEIDEL@state.or.us>; GREENFIELD Sarah <Sarah.GREENFIELD@state.or.us>
Subject: FW: Portland Harbor Draft AOC

Hello Portland Harbor TCT. Attached is the letter that DEQ Director Richard Whitman sent to Michelle Pirzadeh yesterday expressing DEQ's significant concerns with the draft AOC/Workplan for baseline sampling that the Pre-RD Group has been negotiating with EPA. The letter concludes with a request for EPA to provide DEQ and the TCT adequate time to review and comment on the draft AOC/Workplan. Otherwise, DEQ invokes dispute resolution under the 2001 Portland Harbor MOU.

Please forward this letter to whoever I may have missed in this email.

Kevin Parrett, Manager

NW Region Cleanup Program

Oregon Department of Environmental Quality

700 NE Multnomah Street, Suite 600,

Portland, OR 97232

Office: 503-229-5567

Mobile: 503-997-4313

From: WHITMAN Richard [<mailto:Richard.WHITMAN@state.or.us>]

Sent: Thursday, October 05, 2017 9:03 PM

To: 'Michelle Pirzadeh' <pirzadeh.michelle@epa.gov>

Cc: 'Cyndy Mackey' <mackey.cyndy@epa.gov>; 'Jim Woolford' <woolford.james@epa.gov>; 'Sheryl Bilbrey' <bilbrey.sheryl@epa.gov>; 'Davis Zhen' <Zhen.Davis@epa.gov>; 'PARRETT Kevin' <kevin.parrett@state.or.us>

Subject: Portland Harbor Draft AOC

Michelle: Please find attached a letter from Oregon DEQ expressing our significant concerns with the current draft AOC and work plan being negotiated for pre-remedial design and baseline sampling for Portland Harbor. As noted in the letter, we look forward to resolving these concerns as quickly as possible given our mutual desire to move forward with implementation of the Portland Harbor Superfund Record of Decision.

Richard Whitman

Director

Oregon Dept. of Environmental Quality

<10-5-2017 Letter to Acting Region 10 Administrator Pirzadeh.pdf>

To: Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Fonseca, Silvina[Fonseca.Silvina@epa.gov]
From: Bodine, Susan
Sent: Tue 10/17/2017 3:43:52 PM
Subject: RE: Portland Harbor call on Friday

Do you recommend I participate?

Or do you want to let me know after you get the updated documents?

From: Mackey, Cyndy
Sent: Tuesday, October 17, 2017 11:41 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>
Subject: RE: Portland Harbor call on Friday

Susan

Ex. 5 - Deliberative Process

Cyndy Mackey

Director, Office of Site Remediation Enforcement

EPA-Office of Enforcement and Compliance Assurance (Mail Code-2271A)

1200 Pennsylvania Ave., N.W. (Room-WJC 5206) Washington, DC 20460

202 564-8206 (Direct Line)

202 564-5110 (Office Line)

202 591-6184(Office Cell)

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you

From: Bodine, Susan

Sent: Tuesday, October 17, 2017 11:34 AM

To: Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>

Subject: Portland Harbor call on Friday

What is the scope of this discussion?

Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Traylor, Patrick[traylor.patrick@epa.gov]
To: Bowman, Liz[Bowman.Liz@epa.gov]
From: Bodine, Susan
Sent: Sun 10/22/2017 1:35:34 PM
Subject: Re: Planning for ENRD/EPA Press Call -- PDC and ExxonMobil Clean Air Act Settlements

Ex. 5 - Deliberative Process

Sent from my iPhone

On Oct 21, 2017, at 5:01 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

I think we are planning to do this, right (participate on the joint call with DOJ about these enforcements)?

From: Wilcox, Jahan
Sent: Saturday, October 21, 2017 12:38 PM
To: Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Subject: Re: Planning for ENRD/EPA Press Call -- PDC and ExxonMobil Clean Air Act Settlements

I think so let me add Liz.

Sent from my iPhone

On Oct 21, 2017, at 11:38 AM, Flores, Sarah Isgur (OPA) <Sarah.Isgur.Flores@usdoj.gov> wrote:

Y'all on board w this?

Begin forwarded message:

From: "Abueg, Mark (OPA)" <mabueg@jmd.usdoj.gov>
Date: October 21, 2017 at 11:37:12 AM EDT

To: "Flores, Sarah Isgur (OPA)" <siflores@jmd.usdoj.gov>, "Prior, Ian (OPA)" <IPrior@jmd.usdoj.gov>
Cc: "Hornbuckle, Wyn (OPA)" <whornbuckle@jmd.usdoj.gov>, "Edwards, Jeremy M. (OPA)" <jmedwards@jmd.usdoj.gov>
Subject: Planning for ENRD/EPA Press Call -- PDC and ExxonMobil Clean Air Act Settlements

Sarah and Ian,

ENRD wants to conduct a joint press call (either Monday, Oct. 30 or Tuesday, Oct. 31) with the EPA to announce two separate settlements that resolve violations of the Clean Air Act. One involves PDC Energy, Inc. (EPA's Region 8) and the other is with ExxonMobil (EPA Region 6).

Speakers on the call would include the following:

- [REDACTED] DOJ, ENRD
- [REDACTED] EPA, Office of Enforcement and Compliance Assurance (OECA)
- [REDACTED] EPA Region 6
- [REDACTED] EPA, Region 8

Just wanted to make sure this is okay and that there are no conflicts on either day.

Best,

Mark

Mark Abueg
Public Affairs Specialist
U.S. Department of Justice
Office of Public Affairs

Office: (202) 353-6836
Cell: (202) 353-5132
Email: mark.abueg@usdoj.gov
Website: www.justice.gov

To: Bailey, Ethel[Bailey.Ethel@epa.gov]
From: Bodine, Susan
Sent: Mon 10/30/2017 8:12:47 PM
Subject: FW: Colorado Springs Meeting, call in number 1(866) 299-3188, code (202) 564-8179
Colorado Springs Amended Complaint.pdf

From: Fergusson, Bruce
Sent: Friday, October 27, 2017 12:11 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Bruce, Susan <Bruce.Susan@epa.gov>
Cc: Jackson, Laurianne <Jackson.Laurianne@epa.gov>; Hammond, Lauren <Hammond.Lauren@epa.gov>; Thompson, Christopher <Thompson.Christopher@epa.gov>; Eppers, Jim <Eppers.Jim@epa.gov>; DeJong, Stephanie <DeJong.Stephanie@epa.gov>; Boeglin, Michael <Boeglin.Michael@epa.gov>; Opekar, Kimberly <Opekar.Kimberly@epa.gov>; Bohan, Suzanne <bohan.suzanne@epa.gov>; Palomares, Art <Palomares.Art@epa.gov>; Ford, Peter <Ford.Peter@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: RE: Colorado Springs Meeting, call in number **Ex. 5 - Attorney Client**

Hi folks,

I've noticed that some people have a copy of the original Colorado Springs complaint instead of the Amended Complaint. While there is no real substantive difference between the two versions, some of the paragraph numbers differ. So I'm attaching the Amended Complaint to make sure we are all referring to the same document during the meeting. Thanks.

Bruce

Bruce Fergusson

Water Enforcement Division

Office of Enforcement and Compliance Assurance

U.S. EPA

(202) 564-1261

-----Original Appointment-----

From: Starfield, Lawrence

Sent: Friday, October 13, 2017 2:51 PM

To: Starfield, Lawrence; Bodine, Susan; Traylor, Patrick; Kelley, Rosemarie; Theis, Joseph; Denton, Loren; Bahk, Benjamin; Bruce, Susan; Fergusson, Bruce

Cc: Jackson, Laurianne; Hammond, Lauren; Thompson, Christopher; Eppers, Jim; DeJong, Stephanie; Boeglin, Michael; Opekar, Kimberly; Bohan, Suzanne; Palomares, Art; Ford, Peter; Levine, MaryEllen

Subject: Colorado Springs Meeting, call in number Ex. 5 - Attorney Client

When: Tuesday, October 31, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: 3216WJC-South

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

UNITED STATES OF AMERICA and
THE STATE OF COLORADO,

Plaintiffs,

v.

CITY OF COLORADO SPRINGS, COLORADO

Defendant.

AMENDED COMPLAINT

The United States of America, by authority of the Attorney General and acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Colorado, acting at the request and on behalf of the Colorado Department of Public Health and Environment (“State”) (collectively “Plaintiffs”), allege:

NATURE OF ACTION

1. This is a civil action for injunctive relief and civil penalties brought against the City of Colorado Springs, Colorado (the "City") pursuant to Sections 309(b) and (d) of the Federal Water Pollution Control Act (the "Clean Water Act" or "CWA"), 33 U.S.C. §§ 1319(b) and (d), and the Colorado Water Quality Control Act ("CWQCA"), §§ 25-8-101 et seq. C.R.S.

2. Plaintiffs allege that the City has violated the Clean Water Act and Colorado Water Quality Control Act by failing to comply with the terms and conditions of the City's

National Pollutant Discharge Elimination System ("NPDES") permit issued by the State of Colorado under Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), for discharges of stormwater from the City's municipal separate storm sewer system ("MS4").

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331 (Federal Question), 1345 (United States as Plaintiff), 1355 (Fine, Penalty, or Forfeiture) and 1367 (supplemental jurisdiction over State claims so related to claims in the action within such original jurisdiction that they form part of the same case or controversy).

4. Venue lies in this District pursuant to 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395, because the City and its MS4 are located in this District, the claims in this lawsuit arose in this District, and the acts for which Plaintiffs seek relief occurred in this District.

5. Notice of the commencement of this action has been provided to the State in accordance with 33 U.S.C. § 1319(b).

6. The State has joined this action as a plaintiff, thereby satisfying the requirements of 33 U.S.C. § 1319(e).

DEFENDANT

7. The City is a political subdivision of the State of Colorado and a “municipality” as defined in 33 U.S.C. § 1362(4).

8. The City is a “person” within the meaning of 33 U.S.C. § 1362(5).

9. The City owns and operates a municipal separate storm sewer system, commonly known as an MS4.

STATUTORY AND REGULATORY BACKGROUND

Clean Water Act NPDES Program

10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters, except those discharges that are in compliance with other specifically-enumerated sections of the Act, including Section 402, 33 U.S.C. § 1342.

11. Under Section 402(a) of the Act, 33 U.S.C. § 1342(a), EPA may issue NPDES permits that authorize discharges of pollutants into waters of the United States, subject to conditions and limitations set forth in such permits.

12. A state may establish its own NPDES program and, after receiving EPA approval, issue NPDES permits. 33 U.S.C. § 1342(b). The State of Colorado has been authorized to administer the NPDES program in Colorado since March 27, 1975. 40 Fed. Reg. 16713 (April 14, 1975).

13. When a state is authorized to administer a NPDES permit program pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA retains concurrent authority to enforce state issued permits. 33 U.S.C. §§ 1319, 1342(i).

14. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates Section 301(a) of the Act, 33 U.S.C. § 1311(a), or a permit condition or limitation in a permit issued by EPA or a state under an approved permit program pursuant to Section 402 of the Act, 33 U.S.C. § 1342; see also 33 U.S.C. § 1319(a)(1). Section 309(d) of the

CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4 establish maximum civil penalties for violations of the CWA, including violations of any condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The maximum civil penalty per day per violation of the CWA is \$37,500 for violations occurring on or before November 2, 2015, and effective August 1, 2016, \$51,570 per day per violation of the CWA for violations occurring after November 2, 2015. See 40 C.F.R. § 19.4 (Table 2). For violations occurring prior to January 12, 2009, lower penalty amounts apply. See 40 C.F.R. § 19.4 (Table 1).

15. Section 25-8-607, CRS, authorizes the State to obtain preliminary and permanent injunctions to prevent any continued violations of any NPDES permit issued by the State.

Clean Water Act Stormwater Discharge Program

16. Stormwater runoff is generated when precipitation from rain and snowmelt events flow over land or impervious surfaces and does not percolate into the ground. As the runoff flows over land or impervious surfaces (paved streets, parking lots, and building rooftops), it accumulates debris, chemicals, sediment or other pollutants that can adversely affect water quality, erode streambanks, destroy needed habitat for fish and other aquatic life, and make it more difficult and expensive for downstream users to effectively use the water.

17. Most stormwater dischargers, including municipalities, are considered point sources of pollution and require coverage under a NPDES permit.

18. Sections 402(p)(4)(A) and (B) of the Act, 33 U.S.C. § 1342(p)(4)(A) and (B), establish schedules for issuance of NPDES permits for stormwater discharges from MS4s serving populations of 100,000 people or more. See also 40 C.F.R. § 122.26(a)(3).

19. The Act provides that all permits for discharges from MS4s “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including best management practices [“BMPs”], control techniques and system, design and engineering methods, and such other provisions as the [EPA] or the State determines appropriate for control of such pollutants.” 33 U.S.C. § 1342(p)(3)(B)(iii).

20. Phase I regulations governing the stormwater program were published on November 16, 1990, and are set forth in 40 C.F.R. § 122.26. 55 Fed. Reg. 47990 (Nov. 16, 1990). Phase I regulates storm water discharges from medium and large MS4s, among other entities. Id.

21. The regulations define “municipal separate storm sewer” as “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) . . . [o]wned or operated by a . . . city . . . [and] [d]esigned or used for collecting or conveying storm water” 40 C.F.R. § 122.26(b)(8).

22. The regulations require that applicants for NPDES permits for stormwater discharges from MS4s propose a Stormwater Management Program designed “to reduce the discharge of pollutants to the maximum extent practicable.” 40 C.F.R. § 122.26(d)(2)(iv).

23. The regulations define BMPs as “schedules of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.” 40 C.F.R. § 122.2.

GENERAL ALLEGATIONS

The City's Municipal Separate Storm Sewer System (MS4)

24. The City owns and operates a municipal separate storm sewer system within the meaning of Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2), and 40 C.F.R. § 122.26(b)(8).

25. The City is a Phase I MS4 because it serves a population of 100,000 or more. As of July 1, 2015, the U.S. Census Bureau estimates that the population of the City of Colorado Springs, Colorado, is 456,568 people.

26. When the Phase I stormwater program identifications for medium and large municipalities were made, they were based upon the 1990 Decennial Census by the Bureau of the Census. 55 Fed. Reg. 47990 (Nov. 16, 1990). At that time, the City was identified as a “medium” MS4 because it served a population of more than 100,000 people but less than 250,000. 40 C.F.R. § 122.26(b)(7)(i) at Appendix G.

27. The City's MS4 includes all conveyances owned or operated by the City that are designed or used for collecting or conveying stormwater (with the exception of combined sewers and Publicly Owned Treatment Works (“POTW”)). 5 C.C.R. § 1002-61.2(62). The MS4 includes but is not necessarily limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains. Id.

28. The City's MS4 discharges to Monument Creek, Fountain Creek, Camp Creek, Cheyenne Creek, and Shooks Run, among other waters, within the Arkansas River watershed.

29. All of these waters are State waters. State waters are “any and all surface and subsurface waters which are contained in or flow in or through this state,” except for “waters in sewage systems, waters in treatment works of disposal systems, waters in potable water

distribution systems, and all water withdrawn for use until use and treatment have been completed.” Colorado Water Quality Control Act, § 25-8-103(19), C.R.S.

30. Fountain Creek, Monument Creek, and other waters receiving the City’s MS4 discharges are perennial tributaries that flow into the Arkansas River. The Arkansas River is a “navigable water” and a “waters of the United States” under 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

31. Discharges from the City’s MS4 constitute the “discharge(s)” of “pollutants” from a “point source” to “navigable waters” within the meaning of Sections 502(12), (6), (14), and (7) of the Act, 33 U.S.C. § 1362(12), (6), (14), and (7).

The City’s MS4 Permit

32. The City has a current NPDES Permit for its MS4 (hereinafter “City’s Permit” or “Permit”) issued by the State through the Colorado Discharge Permit System (“CDPS”), and identified numerically as Permit No. COS-000004. The Permit was effective November 1, 2011 through October 31, 2016, and has been administratively extended.

33. Prior to November 1, 2011, the City’s MS4 permit also was identified as Permit No. COS-000004, effective March 4, 2004 through February 28, 2009, and administratively extended until the November 1, 2011 (“2004 Permit”). The City’s first MS4 permit was issued in 1997 and likewise identified as Permit No. Permit COS-000004, effective October 12, 1997 through September 30, 2002, and administratively extended until March 4, 2004 (“1997 Permit”).

34. The City’s Permit requires it to develop, implement, and enforce a CDPS Stormwater Management Program (“SMP”), among other provisions. Permit, Part I.B. All

permitted discharges must be in accordance with the approved SMP and other provisions set forth in the Permit. Permit, Part. I.A.1.

35. An effective SMP is critical to compliance with the City’s Permit. An SMP that does not adequately control stormwater runoff can result in significant discharges of pollutants, including large amounts of sediment, into State waters and subsequent degradation of those waters.

36. The SMP includes five program areas to be implemented by the City: (1) Commercial/Residential Management Program; (2) Illicit Discharges Management Program; (3) Industrial Facilities Program; (4) Construction Sites Program; and (5) Pollution Prevention/Good Housekeeping for Municipal Operations. Permit, Part I.B.1.a.-e.

37. The SMP must be “designed to reduce the discharge of pollutants from the MS4 to the ‘maximum extent practicable’ [“MEP”], to protect water quality, and to satisfy the appropriate water quality requirements” of the Colorado Water Quality Control Act, CRS § 25-8-101 et seq., and the Colorado Discharge Permit Regulation 61. Permit, Part I.B.

38. Implementation of BMPs consistent with the provisions of the SMP and the other requirements in the City’s Permit constitutes compliance with the standard of reducing pollutants to the MEP. Permit, Part I.B.

39. The City has developed a number of documents that together constitute the City’s SMP, including but not limited to the City of Colorado Springs Municipal Code §§ 3.8.101 et seq. (Stormwater Quality Management and Discharge Control Code); and §§ 7.7.1501 et seq. (Grading Plans and Erosion and Stormwater Quality Control Plans) (in particular §§ 7.7.906 et seq.); the CDPS MS4 Colorado Springs COR-000004 Program Descriptions document (March

20, 2012); the O&M Program Procedures document (January 2013) (“O&M Program Procedures”); and the City’s Drainage Criteria Manual - Volume 2 (“DCM Vol. 2”).

40. When the City fails to act in accordance with its SMP, the City is in violation of its Permit because the City is not operating in accordance with the approved SMP and other provisions set forth in the Permit. Permit, Part I.A.1; Permit, Part I.B.1, Part I.E., and Part II.B.8.

41. The City’s MS4 was audited for compliance with its Permit by the EPA and the State of Colorado on February 4-7, 2013 (“2013 Audit”). The EPA and its contractor, PG Environmental, LLC, conducted a follow up inspection of the City’s MS4 for compliance with its Permit on August 18-19, 2015 (“2015 Inspection”).

42. The State conducted a number of inspections at specific construction sites in the City, including an April 7, 2015 inspection of the CMS Inc, Cottonwood Creek Stabilization, Vincent Road and I-25 project, and June 12, 2015 inspections of the Bass Pro at Northgate and Star Ranch (Filing 2) construction sites. On August 13, 2015, the State requested additional documents from the City relating to compliance with the Permit’s construction sites program implementation requirements. The City provided these documents to the State on September 22, 2015.

FIRST CLAIM FOR RELIEF
(Stormwater Management Program Requirements)

43. The allegations of the foregoing paragraphs are incorporated herein by reference.

44. The City is required to develop and implement a SMP. Permit, Part I.B.

45. The City is required to “provide adequate finances, staff, equipment, and support capabilities to implement the CDPS Stormwater Management Program.” Permit, Part I.B.3.

46. The City is required to “at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory process controls, including appropriate quality assurance procedures.” Permit, Part II.A.7.

47. Pursuant to these requirements, the City must “take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or environment.” Permit, Part II.A.8.

48. The City’s 2004 Permit and 1997 Permit had similar requirements related to the development and implementation of a SMP, including providing adequate resources, and the duty to prevent adverse impacts to human health or environment. 2004 Permit, Part I.B.1 and 3; 2004 Permit, Part II.A.2 and 3; 1997 Permit, Part I.B.1 and 3; 1997 Permit, Part II.A.2. and 3.

49. On December 13, 2005, the Colorado Springs City Council established the Stormwater Enterprise by Ordinance No. 05-192, creating a new Article 8 (Stormwater Enterprise) of Chapter 14 (Municipal Enterprise) of the City of Colorado Springs Municipal Code. City Ord. No. 05-192; City Code §§ 14.8.101 et seq.

50. On November 14, 2006, the Colorado Springs City Council established fees for the Stormwater Enterprise by passing Resolution No. 193-06, and later revised the fee structure on August 28, 2007, by passing Resolution No. 152-07. City Res. No. 193-06; City Res. No. 152-07.

51. On December 8, 2009, the Colorado Springs City Council passed Resolution No. 299-09, which phased out stormwater service fees used to fund the Stormwater Enterprise. City Res. No. 299-09 at Exhibit A. Starting January 1, 2010, the monthly stormwater fee previously assessed to various property owners and businesses was set at “\$0.00.” *Id.*

52. In November 2016, the City released the latest version of the Stormwater Program Implementation Plan (“SwPIP”), which states that the City has created a separate Stormwater Division within its Public Works Department and that the number of staff dedicated to stormwater work, including operation and maintenance, will increase to 66 Full-Time Equivalents (“FTEs”) by the end of 2017. SwPIP at p. 2.

53. The City estimates that stormwater program costs from 2016-2025, including operation and maintenance, will require an average of \$7.8 million annually when fully staffed. SwPIP at p. 29.

54. These numbers contrast starkly with City-funded expenditures on stormwater, including operation and maintenance, after 2009 when the stormwater service fees under the Stormwater Enterprise (“SWENT”) were phased out.

55. From 2011 through 2014, the amount of City-funded stormwater program expenditures, including operation and maintenance and personnel costs, averaged \$1,603,526 per year. Actual expenditures for 2015 were not included in the 2015 Annual Report from the City to CDPHE. City of Colorado Springs, Annual MS4 Reports 2011-2015.

56. The number of staff dedicated to stormwater work, including operation and maintenance, averaged only 9 FTEs for the same years 2011-2014. City’s Response (April 22, 2016) to EPA’s Information Request Letter (March 29, 2016) at Question 15.

57. Since at least 2009, the City has failed to provide adequate resources to implement the SMP and other provisions of the Permit, and to properly operate and maintain facilities used to achieve compliance with Permit conditions. Permit, Part I.B. and I.B.3; Permit, Part II.A.7; 2004 Permit, Part I.B.1 and 3; 2004 Permit, Part II.A.3.

58. This shortfall in resources forms the basis for the majority of the other violations set forth in the Complaint and has led to discharges from the City's MS4 that are not in compliance with the SMP. See e.g. Seventh Claim for Relief at ¶¶ 184-202. Wright Water Engineers, Inc. concluded that sediment deposition along Fountain Creek between the cities of Fountain and Pueblo increased by 295,000 tons per year after 1980. See <http://county.pueblo.org/fountain-creek-watershed> (presentation to Pueblo County Commissioners dated August 14, 2015 at Part 2, p. 61).

59. By failing to provide adequate resources to implement the SMP and other provisions of the Permit since at least 2009, and to properly operate and maintain facilities used to achieve compliance with Permit conditions, the City has allowed discharges that are not in accordance with the SMP and other provisions of the Permit, violating Part I.A.1 of its Permit. Permit, Part I.A.1; 2004 Permit, Part I.A.1.

60. By failing to provide adequate resources to implement the SMP and other provisions of the Permit, and to properly operate and maintain facilities used to achieve compliance with Permit conditions, the City also has failed to minimize the adverse impacts to human health or the environment. Permit, Part II.A.8; 2004 Permit, Part II.A.2; 1997 Permit, Part II.A.2.

61. Unless enjoined by this Court, the City's violations will continue. Pursuant to 33 U.S.C. § 1319(b) and CRS § 25-8-607, the City is subject to injunctive relief to prevent any continued violations of the Permit.

62. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and Colorado Water Quality Control Act, CRS § 25-8-101 et seq., the City is liable for civil penalties not to exceed the statutory maximum for each violation.

SECOND CLAIM FOR RELIEF
(Adoption of 2000 Cottonwood Creek DBPS and "Prudent Line" Concept)

63. The allegations of the foregoing paragraphs are incorporated herein by reference.

64. The City is required to implement and enforce the SMP's Commercial/Residential Management Program. Permit, Part I.B.1.a.

65. The Commercial/Residential Program requires that the City properly manage and regulate runoff from new development and redevelopment. Permit, Part I.B.1.a.(2). "The permittee must implement and enforce a program to address stormwater runoff from projects for which construction activities disturb greater than or equal to one acre, including projects that are less than one acre that are part of a larger common plan of development or sale that discharge into the MS4." Id.

66. "The program must ensure that controls are in place that would prevent or minimize water quality impacts." Permit, Part I.B.1.a.(2).

67. The Permit requires that "[m]inimum technical requirements for required structural BMPs shall be documented and be based on those specified in the Drainage Criteria Manual Volume II or equivalent and be in accordance with good engineering, hydrologic and pollution control practices; [u]se an ordinance or other regulatory mechanism to address post-

construction runoff from projects . . . [i]mplement and document procedures to determine if the BMPs required under Item (a), above, are designed and installed in accordance with program requirements” Permit, Part I.B.1.a.(2)(a) to (c).

68. The Permit requires that the City “shall continue to implement procedures to assure that the impact on water quality is assessed for proposed flood management projects.” Permit, Part I.B.1.a.(3).

69. The City is required to “take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or environment.” Permit, Part II.A.8.

70. The City’s 2004 Permit and 1997 Permit had similar requirements related to new development and post-construction controls to properly manage stormwater runoff and to prevent or minimize water quality impacts, assessment of water quality impacts from flood control projects, and minimization of adverse impacts to human health or the environment. 2004 Permit, Part I.B.1.b. and Part II.A.2.; 1997 Permit, Part I.B.1.b. and Part II.A.2.

71. The City is required to use “ordinance or other regulatory mechanism to address post-construction runoff from projects and to implement the requirements of this section, I.B.1.a.(2), to the extent allowable under State or local law.” Permit, Part I.B.1.a.(2)(b) and Part I.B.2; 2004 Permit, Part I.B.2; 1997 Permit, Part I.B.2.

72. The City of Colorado Springs Municipal Code further requires that “[a]ll stormwater quality requirements, including best management practices (BMPs), policies and procedures must be complied with as outlined in the ‘Drainage Criterial Manual, Volume II.’” City Code § 7.7.906 B; see also City Code §§ 7.7.1502 and 7.3.508 F.4 (addressing exemption to

stormwater quality requirements for Streamside Overlay zone sites with a “prudent line” setback under certain circumstances).

73. The DCM Vol. 2 explains that water quality is impacted both by changes in stream morphology and by pollutants in the stormwater: “Water quality is impacted through urbanization as a result of erosion during construction, changes in stream morphology, and washing off of accumulated deposits on the urban landscape. Water quality problems include turbid water, nutrient enrichment, bacterial contamination, organic matter loads, metals, salts, temperature increases and increased trash and debris.” DCM Vol. 2 (2002) at 2-1; DCM Vol. 2 (2014) at 1-2.

74. The DCM Vol. 2 explains that the stream morphology and therefore water quality is impacted by changes in the stream hydrology: “When the hydrology of the stream changes, it results in changes to the physical characteristics of the stream. Such changes include streambed degradation, stream widening, and streambank erosion. As the stream profile degrades and the stream tries to widen to accommodate higher flows, instream bank erosion increases along with increases in sediment loads. These changes in the stream bed also result in change to the habitat of aquatic life.” DCM Vol. 2 (2002) at 2-1; DCM Vol. 2 (2014) at 1-2.

75. The DCM Vol. 2 Vol. 2 explains that the stream hydrology and, therefore, stream morphology and water quality is directly impacted by changes in stream flows resulting from urban development and stormwater runoff: “Urban development affects the environment through changes in the size and frequency of storm runoff events, changes in the base flows of the stream and changes in stream flow velocities during storms results in decrease in travel time for runoff. Peak discharges in a stream can increase from urbanization due to decrease in

infiltration of rainfall into the ground, loss of buffering vegetation and resultant reduced evapotranspiration. This results in more surface runoff and larger loads of various constituents found in stormwater.” DMC Vol. 2 (2002) at 2-1 and DCM Vol. 2 (2014) at 1-2.

76. Both DCM Vol. 2 (2002) and DCM Vol. 2 (2014) require the use of a Four-Step Process for selecting structural BMPs in newly developing and redeveloping urban areas: Step 1-Employ Runoff Reduction Practices; Step 2-Stabilize Drainageways; Step 3-Provide Water Quality Capture Volume (“WQCV”); and Step 4-Consider Need for Industrial and Commercial BMPs. DCM Vol. 2 (2002) at 4-3 to 4-4; DCM Vol. 2 (2014) at 1-8 to 1-14 (Step 1-Employ Runoff Reduction Practices; Step 2-Implement BMPs That Provide a Water Quality Capture Volume with Slow Release; Step 3-Stabilize Drainageways; Step 4-Implement Site Specific Other Source Control BMPs).

77. Directly reducing impacts to stream morphology and, therefore, water quality is the goal of Step 2-Stabilize Drainageways, as explained in the DCM Vol. 2 (2002): “Drainageway, natural and manmade, erosion can be a major source of sediment and associated constituents, such as phosphorous. Natural drainageways are often subject to bed and bank erosion when urbanizing areas increase the frequency, rate and volume of runoff. Therefore, drainageways are required to be stabilized.” DCM Vol. 2 (2002) at 4-3; DCM Vol. 2 (2014) at 1-13 (Step 3-Stabilize Drainageways).

78. The DCM Vol. 2 (2014) further explains that drainageway stabilization is accomplished by construction undertaken by the developer of a project or through drainage fees paid by the developer: “All new and re-development projects are required to construct or participate in the funding of the construction of the channel stabilization measures required by

the applicable [drainage basin planning study] or master plan or needed to ensure channel stability.” DCM. Vol. 2 (2014) at 1-13.

79. The City uses a Drainage Basin Planning Study (“DBPS”) “to define major stormwater improvement needs in the City. Each DBPS identifies needed improvements, environmental impacts and estimated costs. The needs may be located in older, existing developed areas, that are City responsibility, or areas to be developed that developers will be responsible for. The City has master plans for approximately 30 major drainage basins.” See <https://coloradosprings.gov/stormwater/page/stormwater-drainage> .

80. The City of Colorado Springs Municipal Code requires that when a development is subdivided into smaller parts, “the subdivider shall . . . prepare a drainage report which shall show the channels, conduits, detention/retention basins, culverts, bridges, easements and all other drainage facilities for the control and drainage of surface water including the control of stormwater quality within the subdivision, or the part to be approved, and the carriage of water to a safe discharge or outflow point, all in conformity with the Drainage Basin Planning Study (DBPS) as approved by the City, together with the estimated cost of constructing these facilities.” City Code § 7.7.906 A.

81. In 2000, the City adopted the amended Cottonwood Creek Drainage Basin Planning Study, including the “prudent line” concept for drainage and development of the basin. City Council Res. No. 104-00; Cottonwood Creek Drainage Basin Planning Study (June 2000) (hereinafter “Cottonwood Creek DBPS”).

82. The City of Colorado Springs Municipal Code defines “prudent line” as “a buffer zone for erosion and flooding potential within which development would not be considered prudent if the channel were to remain in a natural state.” City Code § 7.3.508 B.

83. The Cottonwood Creek DBPS adopted by the City in 2000 amended an earlier version of the document. City Council Res. No. 104-00; Cottonwood Creek DBPS at v. The 1994 Cottonwood Creek DBPS recommended construction of six regional detention ponds and continuous structural measures (riprap and drop structures), among other BMPs, to reduce velocities and stabilize the Cottonwood Creek channel. Id.

84. The Cottonwood Creek DBPS changed the way that the City managed drainage and development issues in the Cottonwood Creek basin. It eliminated the use of various BMPs as set forth in the 1994 version of the document, and instead adopted an “erosion risk buffer concept, referred to as the prudent line, as the selected alternative for managing drainage issues in the Cottonwood Creek drainage basin.” Cottonwood Creek DBPS at iv.

85. Specifically, the adoption of the Cottonwood Creek DBPS resulted in the elimination of the originally-proposed six regional detention basins and continuous structural measures (such as riprap and drop structures) to reduce velocities and stabilize the channel. Cottonwood Creek DBPS at v. Rather, the Cottonwood Creek DBPS adopted a “prudent line [that] defines a buffer zone for erosion and flooding potential within which development would not be considered prudent if the channel is to remain in a natural state. The basic concept is to trade the cost of land adjacent to the channel (to provide room for the channel to move laterally) with the cost of channel stabilization alternatives that fix the channel in place.” Cottonwood Creek DBPS at 3.1.

86. The Cottonwood Creek DBPS estimated “[a] total cost reduction of approximately \$11.4 million (January 1992 dollars)” by eliminating the proposed detention ponds and associated fees, and reducing the Cottonwood Creek Drainage and Bridge Fees. Cottonwood Creek DBPS at v.

87. Upon information and belief, the City is updating and revising the Cottonwood Creek Drainage Basin Planning Study.

88. The adoption and continuing use by the City of the Cottonwood Creek DBPS and the “prudent line” concept is a violation of the City’s Permit. Permit, Part I.B.1.a.; 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.

89. The adoption and continuing use by the City of the Cottonwood Creek DBPS and the “prudent line” concept is a violation of the City’s Permit requirement to implement the DCM. Permit, Part I.B.1.a.(2)(a).; 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.

90. The adoption and continuing use by the City of the Cottonwood Creek DBPS and the “prudent line” concept is a violation of the requirements of the DCM Vol. 2 to stabilize drainageways. DCM Vol. 2 (2002) at 4-3 to 4-4; DCM Vol. 2 (2014) at 1-13 to 1-14.

91. The adoption and continuing use by the City of the Cottonwood Creek DBPS and the “prudent line” concept is a violation of the requirement to prevent or minimize water quality impacts in this basin because, among other reasons, unstabilized drainageways result in negative impacts to stream morphology and water quality. Permit, Part I.B.1.a.(2); 2004 Permit, Part I.B.1.b; 1997 Permit, Part I.B.1.b. The City also failed to minimize the adverse impacts to human health or the environment in this basin by adopting the Cottonwood Creek DBPS and the “prudent line” concept. Permit, Part II.A.8; 2004 Permit, Part II.A.2; 1997 Permit, Part II.A.2.

92. The adoption and continuing use by the City of the Cottonwood Creek DBPS and the “prudent line” concept is a violation of the City of Colorado Springs Municipal Code §§ 3.8.101 et seq. (Stormwater Quality Management and Discharge Control Code); § 7.3.508 (Streamside Overlay Zone); §§ 7.7.1501 et seq. (Grading Plans and Erosion and Stormwater Quality Control Plans) (in particular §§ 7.7.906 et seq.)

93. By allowing discharges that are not in accordance with the City’s SMP and other provisions of the Permit, the City has violated Part I.A.1 of its Permit since the adoption of the 2000 Cottonwood Creek DBPS and the “prudent line” concept. Permit, Part I.A.1; 2004 Permit, Part I.A.1; 1997 Permit, Part I.A.1.

94. Unless enjoined by this Court, the City’s violations will continue. Pursuant to 33 U.S.C. § 1319(b) and CRS § 25-8-607, the City is subject to injunctive relief to prevent any continued violations of the Permit.

95. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and Colorado Water Quality Control Act, C.R.S. § 25-8-101 et seq., the City is liable for civil penalties not to exceed the statutory maximum for each violation.

THIRD CLAIM FOR RELIEF
(Water Quality Control Structures Placed in State Waters)

96. The allegations of the foregoing paragraphs are incorporated herein by reference.

97. The City is required to implement and enforce the SMP’s Commercial/Residential Management Program. Permit, Part I.B.1.a.

98. The Commercial/Residential Management Program requires that the City properly manage and regulate runoff from new development and redevelopment. Permit, Part I.B.1.a.(2). “The permittee must implement and enforce a program to address stormwater runoff from

projects for which construction activities disturb greater than or equal to one acre, including projects that are less than one acre that are part of a larger common plan of development or sale that discharge into the MS4.” Id.

99. “The program must ensure that controls are in place that would prevent or minimize water quality impacts.” Permit, Part I.B.1.a.(2).

100. The Permit requires that “[m]inimum technical requirements for required structural BMPs shall be documented and be based on those specified in the Drainage Criteria Manual Volume II or equivalent and be in accordance with good engineering, hydrologic and pollution control practices; [u]se an ordinance or other regulatory mechanism to address post-construction runoff from projects...[i]mplement and document procedures to determine if the BMPs required under Item (a), above, are designed and installed in accordance with program requirements” Part I.B.1.a.(2)(a) to (c).

101. The Commercial/Residential Management Program also requires that the City ensure that permanent stormwater controls (i.e., BMPs) are tracked and properly operated and maintained. Permit, Part I.B.1.a.(2)(d) to (f).

102. The City is required to “take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or environment.” Permit, Part II.A.8.

103. The City is required to use “ordinance or other regulatory mechanism to address post-construction runoff from projects and to implement the requirements of this section, I.B.1.a(2), to the extent allowable under State or local law.” Permit, Part I.B.1.a.(2)(b) and Part I.B.2; 2004 Permit, Part I.B.2; 1997 Permit, Part I.B.2.

104. The City's 2004 Permit and 1997 Permit had similar requirements related to new development and post-construction controls to properly manage stormwater runoff, and requirements for the minimization of adverse impacts to human health or the environment. 2004 Permit, Part I.B.1.b. and Part II.A.2.; 1997 Permit, Part I.B.1.b. and Part II.A.2.

105. The DCM Vol.2 (2002) states that "[t]he intent of permanent water quality BMPs is that they be placed prior to the stormwater runoff being discharged to State Waters." DCM Vol.2 (2002) at 4-2.

106. The DCM Vol.2 (2014) states that "[i]n accordance with MS4 permits and regulations, BMPs must be implemented prior to discharges to State Water from areas of 'New Development and Significant Redevelopment'." DCM Vol.2 (2014) at 1-15. It further states, "if a regional BMP is utilized downstream of a discharge from a development into a State Water, additional BMPs are required to protect the State Water between the development site and the regional facility." Id.

107. Both DCM Vol. 2 (2002) and DCM Vol. 2 (2014) require the use of a Four-Step Process for selecting structural BMPs in newly developing and redeveloping urban areas: Step 1-Employ Runoff Reduction Practices; Step 2-Stabilize Drainageways; Step 3-Provide Water Quality Capture Volume ("WQCV"); and Step 4-Consider Need for Industrial and Commercial BMPs. DCM Vol. 2 (2002) at 4-3 to 4-4; DCM Vol. 2 (2014) at 1-8 to 1-14 (Step 1-Employ Runoff Reduction Practices; Step 2-Implement BMPs That Provide a Water Quality Capture Volume with Slow Release; Step 3-Stabilize Drainageways; Step 4-Implement Site Specific Other Source Control BMPs).

108. During the 2013 Audit, the EPA identified at least two water quality control structures that had been placed in State waters at the Flying Horse Pond Filing 26 and the First and Main Town Center developments. Neither of these developments provided for treatment of stormwater prior to the discharge into State waters.

109. The First and Main Town Center development drainage report for Filing 16 was received by the City on February 2, 2012. In the water quality section of the drainage report, it stated that water quality measures for this site were provided within Sand Creek Detention Pond No. 1.

110. Sand Creek Detention Pond No. 1 is a massive 250 acre-foot detention basin along Constitution Avenue that has been filled with a roughly estimated 15,000 to 25,000 tons of sediment. The City took over Sand Creek Detention Pond No. 1 from the developer in 2005 to serve as a regional stormwater detention basin and enhance water quality in the lower reaches of Sand Creek downstream of Constitution Avenue.

111. By placing water quality control structures in State waters, the City failed since at least February 4, 2013, to minimize water quality impacts. Permit, Part I.B.1.a.(2); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b. The City also has failed to minimize the adverse impacts to human health or the environment by placing water quality control structures in State waters. Permit, Part II.A.8; 2004 Permit, Part II.A.2; 1997 Permit, Part II.A.2.

112. The City failed to provide for treatment of stormwater prior to the discharge into State waters since at least February 4, 2013, in violation of its Permit. Permit, Part I.B.1.a.; 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.

113. By failing to provide for treatment of stormwater prior to the discharge into State waters since at least February 4, 2013, the City also has violated applicable provisions of DCM Vol. 2. (2002) at 4-2 and Sect. 4-1; DCM Vol. 2 (2014) at 1-15 and Ch.4.

114. By failing to provide for treatment of stormwater prior to the discharge into State waters since at least February 4, 2013, the City has violated its Municipal Code §§ 3.8.101 et seq. (Stormwater Quality Management and Discharge Control Code); §§ 7.7.1501 et seq. (Grading Plans and Erosion and Stormwater Quality Control Plans) (in particular §§ 7.7.906 et seq.).

115. By allowing discharges that are not in accordance with the City's SMP and other provisions of the Permit since at least February 4, 2013, the City has violated Part I.A.1 of its Permit. Permit, Part I.A.1.; 2004 Permit, Part I.A.1.; 1997 Permit, Part I.A.1.

116. Unless enjoined by this Court, the City's violations will continue. Pursuant to 33 U.S.C. § 1319(b) and CRS § 25-8-607, the City is subject to injunctive relief to prevent any continued violations of the Permit.

117. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and Colorado Water Quality Control Act, CRS § 25-8-101 et seq., the City is liable for civil penalties not to exceed the statutory maximum for each violation.

FOURTH CLAIM FOR RELIEF
(Stormwater Controls and Water Quality Capture Volume)

118. The allegations of the foregoing paragraphs are incorporated herein by reference.

119. The City is required to implement and enforce the SMP's Commercial/Residential Management Program. Permit, Part I.B.1.a.

120. The Commercial/Residential Program requires that the City properly manage and regulate runoff from new development and redevelopment. Permit, Part I.B.1.a.(2). “The permittee must implement and enforce a program to address stormwater runoff from projects for which construction activities disturb greater than or equal to one acre, including projects that are less than one acre that are part of a larger common plan of development or sale that discharge into the MS4.” Id.

121. “The program must ensure that controls are in place that would prevent or minimize water quality impacts.” Permit, Part I.B.1.a.(2).

122. The Permit requires that “[m]inimum technical requirements for required structural BMPs shall be documented and be based on those specified in the Drainage Criteria Manual Volume II or equivalent and be in accordance with good engineering, hydrologic and pollution control practices; [u]se an ordinance or other regulatory mechanism to address post-construction runoff from projects . . . [i]mplement and document procedures to determine if the BMPs required under Item (a), above, are designed and installed in accordance with program requirements” Permit, Part I.B.1.a.(2)(a) to (c).

123. The City is required to “take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or environment.” Permit, Part II.A.8.

124. The City is required to use “ordinance or other regulatory mechanism to address post-construction runoff from projects and to implement the requirements of this section, I.B.1.a.(2), to the extent allowable under State or local law.” Permit, Part I.B.1.a.(2)(b) and Part I.B.2; 2004 Permit, Part I.B.2; 1997 Permit, Part I.B.2.

125. The City's 2004 Permit and 1997 Permit had similar requirements related to new development and post-construction controls to properly manage stormwater runoff, and requirements for the minimization of adverse impacts to human health or the environment. 2004 Permit, Part I.B.1.b. and Part II.A.2.; 1997 Permit, Part I.B.1.b. and Part II.A.2.

126. The DCM Vol. 2 (2002) states, among other things, that: "The intent of permanent water quality BMPs is that they be placed prior to the stormwater runoff being discharged to State Waters . . . [w]henever practical, the City of Colorado Springs promotes permanent water quality BMPs on all sites." DCM Vol. 2 (2002) at 4-2; DCM Vol. 2 (2014) (requiring Four-Step Process to minimize adverse impacts of urbanization) at 1-8 to 1-14, and Ch. 4 (Treatment BMPs).

127. The DCM Vol. 2 (2002) states that for, "[a]ll sites zoned R-4, R-5, PUD, SU, OR, OC, PBC, C-5, C-6, PIP-1, PIP-2, M-1, M-2, PF, APD, and PCR that include total development/redevelopment areas of one (1) acre or larger . . . Water Quality Capture Volume (WQCV) . . . shall be provided for the total site or individual lots/parcels. Other permanent BMPs may also be required as appropriate." DCM Vol. 2 (2002) at 4-1.

128. The DCM Vol. 2 (2002) states, "[a]ll sites zoned R (Estate), R-1 6000, R-1 9000, R-2 and DFOZ, that include total development/redevelopment areas of two (2) acres or larger will be reviewed on a case by case basis that will include an assessment of impacts from stormwater runoff from new development/redevelopment to State Waters and a determination of the need for any additional permanent water quality BMPs. Sites for which City Engineering determines water quality impacts to State Waters are minimal and permanent water quality

BMPs are impracticable will be granted a waiver, based on the submittal of sufficient justification.” DCM Vol. 2 (2002) at 4-1.

129. The DCM Vol. 2 (2014) does not allow waivers for water quality control measures for residential properties. Compare DCM Vol. 2 (2014) at 4-1 with DCM Vol. 2 (2002) at 4-1.

130. Both DCM Vol. 2 (2002) and DCM Vol. 2 (2014) require the use of a Four-Step Process for selecting structural BMPs in newly developing and redeveloping urban areas: Step 1-Employ Runoff Reduction Practices; Step 2-Stabilize Drainageways; Step 3-Provide Water Quality Capture Volume (“WQCV”); and Step 4-Consider Need for Industrial and Commercial BMPs. DCM Vol. 2 (2002) at 4-3 to 4-4; DCM Vol. 2 (2014) at 1-8 to 1-14 (Step 1-Employ Runoff Reduction Practices; Step 2-Implement BMPs That Provide a Water Quality Capture Volume with Slow Release; Step 3-Stabilize Drainageways; Step 4-Implement Site Specific Other Source Control BMPs).

131. Both the DCM Vol. 2 (2002) and the DCM Vol. 2 (2014) require that the City provide WQCV. “All multi-family residential, commercial, and industrial sites and all sites requiring stormwater quantity detention . . . must address stormwater quality by providing the WQCV.” DCM Vol. 2 (2002) at 4-4. “The Four Step Process . . . is applicable to all new re-development projects with construction activities that disturb 1 acre or greater or that disturb less than 1 acre but are part of a larger common plan of development or sale.” DCM Vol. 2 (2014) at 1-8 (Step 2: Implement BMPs that Provide A Water Quality Capture Volume With Slow Release).

132. The City of Colorado Springs Municipal Code states, “[a]ll sites zoned R estate (residential), R-1 6000 (Single-family residential), R-1 9000 (single-family residential), R-2 (two-family residential) and DFOZ (design flexibility overlay – base zone must be R, R-1 6000 or R-1 9000) that include total development/redevelopment areas of two (2) acres or larger will be reviewed on a case by case basis that will include an assessment of impacts from stormwater runoff from the new development to State waters and a determination of the need for any additional permanent water quality BMPs. Sites for which City Engineering determines water quality impacts to State waters are minimal and permanent water quality BMPs are impractical will be granted a waiver, based on the submittal of sufficient justification. Written waiver requests from requiring permanent stormwater quality BMPs will be considered by the City Engineer.” City Code § 7.7.906 B.3.

133. All sites that do not meet the requirements of City Code § 7.7.906 B.3 “may be required to provide permanent stormwater quality BMPs if significant stormwater quality impacts are anticipated as a result of development/redevelopment of the Site, as determined by the City Engineer.” City Code § 7.7.906 B.4.

134. “Whenever practical, the City of Colorado Springs promotes permanent stormwater quality BMPs on all sites.” City Code § 7.7.906 B.4

135. During the 2013 Audit, the EPA identified seven residential developments where the City failed to require stormwater control measures, failed to require written requests from the developers for such waivers of stormwater control measures, failed to require from the developers and then assess on a case by case basis sufficient justification to allow for waivers of stormwater control measures, failed to assess the impacts from stormwater runoff at these

developments without stormwater control measures, and failed to determine whether any additional permanent water quality BMPs were necessary at these developments. These actions were a violation of the City's Permit, the applicable DCM Vol. 2 criteria, and Municipal Code. Permit, Part I.B.1.a.(2) and (a); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b; DCM Vol. 2 (2002) at 4-1 and DCM Vol. 2 (2014) at 4-1; City Code § 7.7.906 B.3.

136. By failing to require stormwater control measures at these seven developments, the City failed to prevent or minimize water quality impacts. Permit, Part I.B.1.a.(2); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.

137. By failing to require stormwater control measures at these seven developments, the City failed to provide for treatment of stormwater prior to the discharge into State waters. Permit, Part I.B.1.a.(2); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.; DCM Vol. 2 (2002) at 4-2 and DCM Vol. 2 (2014) at 1-8 to 1-14; City Code § 7.7.906 B.4.

138. The City also failed at these seven developments to provide WQCV, as required. Permit, Part I.B.1.a.(2); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.; DCM Vol. 2 (2002) at 4-4; DCM Vol. 2 (2014) at 1-8.

139. By allowing discharges that are not in accordance with the City's SMP and other provisions of the Permit, the City has violated Part I.A.1 of its Permit since at least February 4, 2013. Permit, Part I.A.1; 2004 Permit, Part I.A.1; 1997 Permit, Part I.A.1.

140. Upon information and belief, the City has failed to require stormwater control measures and/or WQCV at other developments within the MS4.

141. By failing to require stormwater control measures and/or WQCV at developments within its MS4, the City has failed to "take all reasonable steps to minimize or prevent any

discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or environment.” Permit, Part II.A.8; 2004 Permit, Part II.A.2; 1997 Permit, Part II.A.2.

142. Unless enjoined by this Court, the City’s violations will continue. Pursuant to 33 U.S.C. § 1319(b) and CRS § 25-8-607, the City is subject to injunctive relief to prevent any continued violations of the Permit.

143. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and Colorado Water Quality Control Act, C.R.S. § 25-8-101 et seq., the City is liable for civil penalties not to exceed the statutory maximum for each violation.

FIFTH CLAIM FOR RELIEF
(Post-Construction BMPs – Design, Approval, Installation)

144. The allegations of the foregoing paragraphs are incorporated herein by reference.

145. The City is required to implement and enforce the SMP’s Commercial/Residential Management Program. Permit, Part I.B.1.a.

146. The Commercial/Residential Management Program requires that the City properly manage and regulate runoff from new development and redevelopment. Permit, Part I.B.1.a.(2). “The permittee must implement and enforce a program to address stormwater runoff from projects for which construction activities disturb greater than or equal to one acre, including projects that are less than one acre that are part of a larger common plan of development or sale that discharge into the MS4.” Id.

147. “The program must ensure that controls are in place that would prevent or minimize water quality impacts.” Permit, Part I.B.1.a.(2).

148. The Permit requires that “[m]inimum technical requirements for required structural BMPs shall be documented and be based on those specified in the Drainage Criteria Manual Volume II or equivalent and be in accordance with good engineering, hydrologic and pollution control practices; [u]se an ordinance or other regulatory mechanism to address post-construction runoff from projects . . . [i]mplement and document procedures to determine if the BMPs required under Item (a), above, are designed and installed in accordance with program requirements” Part I.B.1.a.(2)(a) to (c).

149. The City must “[i]mplement and document procedures to determine if the BMPs required under Item (a), above, are designed and installed in accordance with program requirements.” Permit, Part I.B.1.a.(2)(c).

150. The City is required to use “ordinance or other regulatory mechanism to address post-construction runoff from projects and to implement the requirements of this section, I.B.1.a.(2), to the extent allowable under State or local law.” Permit, Part I.B.1.a.(2)(b) and Part I.B.2; 2004 Permit, Part I.B.2; 1997 Permit, Part I.B.2.

151. The City’s 2004 Permit and 1997 Permit had similar requirements related to new development and post-construction controls to properly manage stormwater runoff. 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.

152. The City of Colorado Springs Municipal Code states that the “[e]rosion and stormwater quality control plan shall require the design, implementation and maintenance of BMPs as set forth in the most recent version of the ‘Drainage Criteria Manual, Volume II: Stormwater Quality Policies, Procedures And Best Management Practices’, and shall include the

plan elements as set forth in the manual, including a cost estimate for all erosion and stormwater quality control measures, prior to filing with the City Engineer." City Code § 7.7.1504 A.

153. The City of Colorado Springs Municipal Code states that “[a]ny land disturbance by any owner, developer, builder, contractor or other person shall comply with the basic grading, erosion and stormwater quality requirements and general prohibitions as listed below. In many cases, this will require the design, implementation and maintenance of BMPs as specified in the manual, even if an erosion and stormwater quality control plan is not required.” City Code § 7.7.1505.

154. Both DCM Vol. 2 (2002) and DCM Vol. 2 (2014) require the use of a Four-Step Process for selecting structural BMPs in newly developing and redeveloping urban areas: Step 1-Employ Runoff Reduction Practices; Step 2-Stabilize Drainageways; Step 3-Provide Water Quality Capture Volume (“WQCV”); and Step 4-Consider Need for Industrial and Commercial BMPs. DCM Vol. 2 (2002) at 4-3 to 4-4; DCM Vol. 2 (2014) at 1-8 to 1-14 (Step 1-Employ Runoff Reduction Practices; Step 2-Implement BMPs That Provide a Water Quality Capture Volume with Slow Release; Step 3-Stabilize Drainageways; Step 4-Implement Site Specific Other Source Control BMPs).

155. The City’s DCM Vol. 2 (2002) has extended detention basin (“EDB”) specification drawings and design forms that require, among other things, “. . . a presedimentation forebay, inlet pipe, top stage, bottom stage, low flow channel, and outlet with trash rack” DCM Vol. 2 (2002) at 4-61 to 4-74. The DCM Vol. 2 (2014) also has design specifications for EDBs. DCM Vol. 2 (2014) at 4-1.

156. The City has failed since at least February 4, 2013, to develop and ensure the design, approval, and installation of BMPs that would prevent or minimize water quality impacts. Permit, Part I.B.1.a.(2); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.

157. The City failed since at least February 4, 2013, to ensure that public and private development and redevelopment plans for permanent BMPs were submitted to the City's Engineering Development Review ("EDR") staff with the required design plans – including required inspection and maintenance plans ("IM") and maintenance agreements ("MA") – prior to approval and issuance of grading permits, in violation of the Permit and City Code. Permit, Part I.B.1.a.(2)(b) and (c); City Code §§ 7.7.1504A and 7.7.1505.

158. Even when public and private development and redevelopment plans for permanent BMPs were submitted to the City's EDR, this review has not been consistent with the requirements of the Permit, applicable provisions of DCM Vol. 2, and Municipal Code. Permit, Part I.B.1.a.(2)(b) and (c); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.; City Code §§ 7.7.1504A and 7.7.1505; DCM Vol. 2 (2002) at Sect. 4-1; DCM Vol. 2 (2014) at Ch. 4 – Ch. 6.

159. The City failed since at least February 4, 2013, to ensure that public and private BMPs, including but not limited to EDBs, have been properly designed, approved, and installed in accordance with the Permit, Municipal Code, and applicable provisions of DCM Vol. 2. Permit, Part I.B.1.a.(2)(b) and (c); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.; City Code §§ 7.7.1504A and 7.7.1505; DCM Vol. 2 (2002) at Sect. 4-1; DCM Vol. 2 (2014) at Ch. 4 – Ch. 6.

160. By allowing discharges that are not in accordance with the City's SMP and other provisions of the Permit since at least February 4, 2013, the City has violated Part I.A.1 of its Permit. Permit, Part I.A.1.; 2004 Permit, Part I.A.1.; 1997 Permit, Part I.A.1.

161. Unless enjoined by this Court, the City's violations will continue. Pursuant to 33 U.S.C. § 1319(b) and CRS § 25-8-607, the City is subject to injunctive relief to prevent any continued violations of the Permit.

162. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and Colorado Water Quality Control Act, CRS § 25-8-101 et seq., the City is liable for civil penalties not to exceed the statutory maximum for each violation.

SIXTH CLAIM FOR RELIEF

(Post-Construction BMPs – Long-term Operation, Maintenance, Tracking)

163. The allegations of the foregoing paragraphs are incorporated herein by reference.

164. The City is required to implement and enforce the SMP's Commercial/Residential Management Program. Permit, Part I.B.1.a.

165. The Commercial/Residential Program requires that the City properly manage and regulate runoff from new development and redevelopment. Permit, Part I.B.1.a.(2). "The permittee must implement and enforce a program to address stormwater runoff from projects for which construction activities disturb greater than or equal to one acre, including projects that are less than one acre that are part of a larger common plan of development or sale that discharge into the MS4." Id.

166. "The program must ensure that controls are in place that would prevent or minimize water quality impacts." Permit, Part I.B.1.a.(2).

167. The Permit requires that “[m]inimum technical requirements for required structural BMPs shall be documented and be based on those specified in the Drainage Criteria Manual Volume II or equivalent and be in accordance with good engineering, hydrologic and pollution control practices; [u]se an ordinance or other regulatory mechanism to address post-construction runoff from projects . . . [i]mplement and document procedures to determine if the BMPs required under Item (a), above, are designed and installed in accordance with program requirements” Permit, Part I.B.1.a.(2)(a) to (c).

168. The City must “[i]mplement and document procedures, including procedures to enforce the requirements to maintain BMPs when necessary, to ensure adequate long-term operation and maintenance of BMPs consistent with the Permittee’s program requirements. Any modification to the BMP design shall be documented prior to the modification occurring.” Permit, Part I.B.1.a.(2)(d).

169. The City must then implement procedures and mechanisms to track the location of these required BMPs and document whether they are constructed and operating as required by the Permit. Permit, Part I.B.1.a.(2)(f).

170. The City’s 2004 Permit and 1997 Permit had similar requirements related to new development and post-construction controls to properly manage stormwater runoff. 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.

171. The City is required to use “ordinance or other regulatory mechanism to address post-construction runoff from projects and to implement the requirements of this section, I.B.1.a.(2), to the extent allowable under State or local law.” Permit, Part I.B.1.a.(2)(b) and Part I.B.2; 2004 Permit, Part I.B.2; 1997 Permit, Part I.B.2.

172. The City's Permit further states that "[t]he permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit." City's Permit, Part II.A.7; 2004 Permit, Part II.A.3; 1997 Permit, Part II.A.3

173. The City of Colorado Springs Municipal Code states that, "[e]rosion and storm water quality control plans shall require the design, implementation and maintenance of BMPs as set forth in the most recent version of the Drainage Criteria Manual, Volume 2: Stormwater Quality Policies, Procedures And Best Management Practices, and shall include plan elements as set forth in the manual" City Code § 7.7.1504 A.

174. The City of Colorado Springs Municipal Code also states that "[a]ny land disturbance by any owner, developer, builder, contractor or other person shall comply with the basic grading, erosion and storm water quality requirements and general prohibitions as listed below. In many cases, this will require the design, implementation and maintenance of BMPs as specified in the manual, even if an erosion and stormwater quality control plan is not required" City Code § 7.7.1505.

175. The City of Colorado Springs Municipal Code also states that "[p]ermanent stormwater quality BMPs ... shall be inspected and maintained by the responsible party, in accord with the provisions of this section and in accord with the measures outlined in the most recent version of the DMC, volume II." City Code § 7.7.1527 A to E.

176. The City failed since at least February 4, 2013, to implement and enforce a program to ensure that long-term controls are in place that would prevent or minimize water quality impacts. Permit, Part I.B.1.a.(2); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.

177. The City failed since at least February 4, 2013, to use its ordinance and available regulatory mechanisms to address noncompliance with the requirements for proper operation and maintenance of BMPs as required. Permit, Part I.B.1.a.(2)(b); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.; City Code §§ 7.7.1504A and 7.7.1505.

178. The City has failed since at least February 4, 2013, to implement and document procedures to enforce the requirements to maintain BMPs and to ensure adequate long-term operation and maintenance of BMPs as required. Permit, Part I.B.1.a.(2)(d); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.; Permit, Part II.A.7.

179. The City failed since at least February 4, 2013, to implement procedures and mechanisms to track the location of required BMPs and document whether they are constructed and operated as required. Permit, Part I.B.1.a.(2)(f); 2004 Permit, Part I.B.1.b.; 1997 Permit, Part I.B.1.b.

180. By failing to implement and document procedures to ensure adequate long-term operation and maintenance of BMPs, the City has violated applicable provisions of DCM Vol. 2. DCM Vol. 2 (2002) at 4-2 and Sect. 4-1; DCM Vol. 2 (2014) at 1-15 and Ch.4 – Ch. 6.

181. By allowing discharges that are not in accordance with the City's SMP and other provisions of the Permit since at least February 4, 2013, the City has violated Part I.A.1 of its Permit. Permit, Part I.A.1.; 2004 Permit, Part I.A.1.; 1997 Permit, Part I.A.1.

182. Unless enjoined by this Court, the City's violations will continue. Pursuant to 33 U.S.C. § 1319(b) and CRS § 25-8-607, the City is subject to injunctive relief to prevent any continued violations of the Permit.

183. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and Colorado Water Quality Control Act, CRS § 25-8-101 et seq., the City is liable for civil penalties not to exceed the statutory maximum for each violation.

SEVENTH CLAIM FOR RELIEF
(Municipally-Owned Structural Controls and Facilities)

184. The allegations of the foregoing paragraphs are incorporated herein by reference.

185. The City is required to implement and enforce the SMP's Commercial/Residential Management Program. Permit, Part I.B.1.a.

186. The Commercial/Residential Program requires that the City "implement a program of routine maintenance activities for municipally-owned structural controls to reduce pollutants (including floatables) in discharges from the MS4." Permit, Part I.B.1.a.(1).

187. As part of this program, the City is required to remove sediment, trash and debris from municipally-owned detention facilities and open-channel drainage ways on a periodic basis, and remove trash and debris from municipally-owned storm sewer inlets on an as-needed basis. Permit, Part I.B.1a.(1)(a) to (c).

188. The City is required to implement and document procedures for meeting these requirements related to maintenance of structural controls by October 1, 2012. Permit, Part I.B.1.a.(1)(b) and (c).

189. The City is required to "provide adequate finances, staff, equipment, and support capabilities to implement the CDPS Stormwater Management Program." Permit, Part I.B.3.

190. Pursuant to these requirements, the City must “at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory process controls, including appropriate quality assurance procedures.” Permit, Part II.A.7.

191. Pursuant to these requirements, the City must “take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or environment.” Permit, Part II.A.8.

192. The City’s 2004 Permit and 1997 Permit had similar requirements related to operation and maintenance of municipally-owned structural controls and facilities, and the duty to minimize or prevent adverse impacts to human health or environment. 2004 Permit, Part I.B.1.a.(1) and Part II A.2. and 3.; 1997 Permit, Part I.B.1.a.(1) and Part II.A.2. and 3.

193. The City is required to ensure “legal authority exists and is maintained to control discharges to and from the MS4.” Part I.B.2; 2004 Permit, Part I.B.2; 1997 Permit, Part I.B.2. There is no City of Colorado Springs Municipal Code that addresses proper operation and maintenance of municipally-owned structural controls and facilities.

194. The City does not meet these requirements. For example, the City has failed to properly operate and maintain Sand Creek Detention Pond No. 1. Sediment and debris continuously accumulate in the basin’s 23.5 acre-foot water quality pool. Because the City has not regularly maintained the basin’s water quality pool, large quantities of sediment have washed from the basin over the drop inlet structure during rain events since 2005.

195. The City has failed since at least August 18, 2015 to properly operate and maintain municipally-owned structural controls, and failed to document and implement procedures for meeting Permit requirements related to operation and maintenance of municipally-owned structural controls. Permit, Part I.B.1a.(1)(a) to (c); 2004 Permit, Part I.B.1.a.(1); 1997 Permit, Part I.B.1.a.(1).

196. The City has failed since at least August 18, 2015, to maintain and operate its municipally-owned structural controls and facilities as required to prevent or minimize water quality impacts. Permit, Part I.B.1.a.(2); 2004 Permit, Part I.B.1.a.(1); 1997 Permit, Part I.B.1.a.(1).

197. The City has failed since at least August 18, 2015 to “provide adequate finances, staff, equipment, and support capabilities to implement the CDPS Stormwater Management Program.” Permit, Part I.B.3; 2004 Permit, Part I.B.1.a.(1); 1997 Permit, Part I.B.1.a.(1).

198. The City also failed since at least August 18, 2015 to properly operate and maintain all facilities and systems of treatment and control used to achieve compliance with the requirements of the Permit. Permit, Part II.A.7.; 2004 Permit, Part II A.3.; 1997 Permit, Part II.A.3.

199. Pursuant to these requirements, the City has failed since at least August 18, 2015, to take all reasonable steps to minimize adverse impacts to human health and the environment. Permit, Part II.A. 8.; 2004 Permit, Part II A.2.; 1997 Permit, Part II.A.2.

200. By allowing discharges that are not in accordance with the City’s SMP and other provisions of the Permit since at least August 18, 2015, the City has violated Part I.A.1 of its Permit. Permit, Part I.A.1.; 2004 Permit, Part I.A.1.; 1997 Permit, Part I.A.1.

201. Unless enjoined by this Court, the City's violations will continue. Pursuant to 33 U.S.C. § 1319(b) and CRS § 25-8-607, the City is subject to injunctive relief to prevent any continued violations of the Permit.

202. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and Colorado Water Quality Control Act, CRS § 25-8-101 et seq., the City is liable for civil penalties not to exceed the statutory maximum for each violation.

EIGHTH CLAIM FOR RELIEF
(Construction Sites Stormwater Quality Control Plans)

203. The allegations of the foregoing paragraphs are incorporated herein by reference.

204. The City is required to implement and enforce the Stormwater Management Program's Construction Sites Program. Permit, Part I.B.1.d.

205. The Construction Sites Program states that the City must "implement and enforce the Construction Sites Program to reduce the discharge of pollutants from public and private construction sites that disturb at least one acre of ground, or are part of a larger common plan of development or sale that would disturb one or more acres." Permit, Part I.B.1.d.

206. The City must require, review, and approve or disapprove stormwater quality control plans for construction sites that disturb at least one acre of ground, or are part of a larger common plan of development or sale that would disturb one or more acres. Permit, Part I.B.1.d.(1)(b).

207. The City must "provide adequate project oversight to prevent inadequate stormwater control site plans from being implemented and resulting in degradation of state waters." Permit, Part I.B.1.d.(1)(b).

208. The City's 2004 Permit and 1997 Permit had similar requirements related to the construction sites program. 2004 Permit, Part I.B.1.b.(3)-(4); 1997 Permit, Part I.B.1.b.(3)-(4).

209. The City is required to "use ordinances and rules to integrate into the development review process the requirements for stormwater quality control plans." Permit, Part I.B.1.d.(1)(a) and Part I.B.2; 2004 Permit, Part I.B.2; 1997 Permit, Part I.B.2.

210. The City of Colorado Springs Municipal Code states that, "[e]rosion and storm water quality control plans shall require the design, implementation and maintenance of BMPs as set forth in the most recent version of the 'Drainage Criteria Manual, Volume II: Stormwater Quality Policies, Procedures And Best Management Practices, and shall include the plan elements as set forth in the manual.'" City Code § 7.7.1504 A.

211. Pursuant to these requirements, the City's DCM Vol. 2 requires that construction sites have stormwater quality control plans that describe stormwater controls and measures to be used to minimize the discharge of pollutants from stormwater. DCM Vol. 2 (2014) at 7-7; DCM Vol. 2 (2002) at 3-2.

212. The DCM Vol. 2 states that any City-approved stormwater quality control plan shall, among other things: (1) identify all potential sources of pollution which may affect the quality of stormwater discharges associated with construction activity; (2) describe the practices to be used to reduce the pollutants in stormwater discharges associated with construction activity including installation, implementation, and maintenance requirements; (3) include narrative descriptions of appropriate controls and measures that will be implemented before and during construction activities at the facility; (4) describe phased BMP implementation, including the relationship between the phases of construction, the proposed sequencing of major activities,

BMPs installed under each phase, and the implementation and maintenance of control measures; (5) be prepared in accordance with good engineering, hydrologic, and pollution control practices; (6) describe the practices used to achieve final stabilization of all disturbed areas at the site, including specific vegetation information; and describe any planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed. DCM Vol. 2 (2014) at 7-6 to 7-14; DCM Vol. 2 (2002) at 3-6 to 3-14.

213. The DCM Vol. 2 requires that any stormwater quality control plan be updated throughout construction and stabilization of the site. DCM Vol.2 (2014) at 7-7; DCM Vol. 2 (2002) at 3-2 to 3-14.

214. Since at least April 7, 2015, the City failed to provide adequate oversight for stormwater quality control plans as required. Permit, Part I.B.1.d.(1); 2004 Permit, Part I.B.1.b.(3)-(4); 1997 Permit, Part I.B.1.b.(3)-(4).

215. Since at least April 7, 2015, the City failed as set forth in its Municipal Code to require compliance with the DCM Vol. 2's site planning provisions and failed to provide adequate project oversight to prevent inadequate stormwater quality control plans from being implemented. Permit, Part I.B.1.d.(1)(a) and Part I.B.2; 2004 Permit, Part I.B.2; 1997 Permit, Part I.B.2; City Code § 7.7.1504 A; DCM Vol.2 (2014) at 7-7; DCM Vol. 2 (2002) at 3-2 to 3-14.

216. Since at least April 7, 2015, the City approved numerous stormwater quality control plans at construction sites that are inadequate and violate the Municipal Code and the City's basic site planning standards in the DCM Vol. 2. Permit, Part I.B.1.d.(1)(a) and Part

I.B.2; 2004 Permit, Part I.B.2; 1997 Permit, Part I.B.2; City Code § 7.7.1504 A; DCM Vol.2 (2014) at 7-7; DCM Vol. 2 (2002) at 3-2 to 3-14.

217. Since at least April 7, 2015, the City has failed to require that stormwater quality control plans at construction sites be updated as required. Permit, Part I.B.1.d.(1)(a) and Part I.B.2; 2004 Permit, Part I.B.2; 1997 Permit, Part I.B.2; City Code § 7.7.1504 A; DCM Vol.2 at 7-7; DCM Vol. 2 (2002) at 3-2 to 3-14.

218. By allowing discharges that are not in accordance with the City's SMP and other provisions of the Permit since at least April 7, 2015, the City has violated Part I.A.1 of its Permit. Permit, Part I.A.1; 2004 Permit, Part I.A.1.; 1997 Permit, Part I.A.1.

219. Unless enjoined by this Court, the City's violations will continue. Pursuant to 33 U.S.C. § 1319(b) and CRS § 25-8-607, the City is subject to injunctive relief to prevent any continued violations of the Permit.

220. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and Colorado Water Quality Control Act, CRS § 25-8-101 et seq., the City is liable for civil penalties not to exceed the statutory maximum for each violation.

NINTH CLAIM FOR RELIEF
(Construction Sites Stormwater Quality Control Plans -- Implementation)

221. The allegations of the foregoing paragraphs are incorporated herein by reference.

222. The City is required to implement and enforce the Stormwater Management Program's Construction Sites Program. Permit, Part I.B.1.d.

223. The Construction Sites Program states that the City must "implement and enforce the Construction Sites Program to reduce the discharge of pollutants from public and private

construction sites that disturb at least one acre of ground, or are part of a larger common plan of development or sale that would disturb one or more acres.” Permit, Part I.B.1.d.

224. The City must “continue to implement requirements for the selection, implementation, installation, and maintenance of appropriate BMPs at construction sites.” Permit, Part I.B.1.d.1.(d)(2). The City also must require that the construction site operators themselves “implement BMPs to control the discharge of pollutants” Permit, Part I.B.1.d.(1)(a).

225. The City must “provide adequate project oversight to prevent inadequate stormwater control site plans from being implemented and resulting in degradation of state waters.” Permit, Part I.B.1.d.(1)(b).

226. The City’s 2004 Permit and 1997 Permit had similar requirements related to the construction sites program. 2004 Permit, Part I.B.1.b.(3)-(4); 1997 Permit, Part I.B.1.b.(3)-(4).

227. The City of Colorado Springs Municipal Code states that, “[a]ny land disturbance by any owner, developer, builder, contractor or other person shall comply with any basic grading, erosion and stormwater quality requirements and general prohibitions . . . this will require the design, implementation and maintenance of BMPs as specified in the manual, even if an erosion and stormwater quality control plan is not required.” City Code § 7.7.1505.

228. Pursuant to these requirements, the City’s DCM Vol. 2 requires that stormwater quality control plans and related BMPs be implemented at construction sites to minimize the discharge of pollutants from stormwater. DCM Vol. 2 (2014) at 7-17; DCM Vol. 2 (2002) at 3-15.

229. The City has failed since at least April 7, 2015, to implement requirements for the selection, implementation, installation, and maintenance of appropriate BMPs at construction sites. Permit, Part I.B.1.d.(1)(a); 2004 Permit, Part I.B.1.b.(3)-(4); 1997 Permit, Part I.B.1.b.(3)-(4).

230. The City has failed since at least April 7, 2015, to provide adequate project oversight to prevent inadequate stormwater quality control plans from resulting in degradation of State waters. Permit, Part I.B.1.d.(1)(b); 2004 Permit, Part I.B.1.b.(3)-(4); 1997 Permit, Part I.B.1.b.(3)-(4); see also City Code § 7.7.1505 A (“Stormwater discharges from construction sites shall not cause or threaten to cause pollution, contamination or degradation of State waters.”)

231. By allowing discharges that are not in accordance with the City’s SMP and other provisions of the Permit since at least April 7, 2015, the City has violated Part I.A.1 of its Permit. Permit, Part I.A.1; 2004 Permit, Part I.A.1.; 1997 Permit, Part I.A.1.

232. Unless enjoined by this Court, the City’s violations will continue. Pursuant to 33 U.S.C. § 1319(b) and CRS § 25-8-607, the City is subject to injunctive relief to prevent any continued violations of the Permit.

233. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and Colorado Water Quality Control Act, CRS § 25-8-101 et seq., the City is liable for civil penalties not to exceed the statutory maximum for each violation.

TENTH CLAIM FOR RELIEF
(Construction Sites Stormwater Quality Control Plans -- Enforcement)

234. The allegations of the foregoing paragraphs are incorporated herein by reference.

235. The City is required to implement and enforce the Stormwater Management Program’s Construction Sites Program. Permit, Part I.B.1.d.

236. The Construction Sites Program states that the City must “implement and enforce the Construction Sites Program to reduce the discharge of pollutants from public and private construction sites that disturb at least one acre of ground, or are part of a larger common plan of development or sale that would disturb one or more acres.” Permit, Part I.B.1.d.

237. The City is required to “implement procedures for inspection and enforcement of control measures at construction sites to the extent allowable under State and local law.” Permit, Part I.B.1.d.(3).

238. The City must implement this enforcement program “to ensure compliance with requirements as defined in [City of Colorado Springs] ordinances and rules and approved plans, and to ensure effective operation and maintenance of BMPs,” and “minimize the occurrence of, and obtain compliance from, chronic and recalcitrant violators of control measures.” Permit, Part I.B.1.d.(3).

239. The City’s 2004 Permit and 1997 Permit had similar requirements related to the construction sites program. 2004 Permit, Part I.B.1.b.(3)-(4); 1997 Permit, Part I.B.1.b.(3)-(4).

240. The City of Colorado Springs Municipal Code states that, “[t]he property owner or the property owner’s designated agent shall perform regular inspections of all grading, erosion control and stormwater quality control operations in accord with the inspections procedures outlined in the manual or as revised on the grading plan and/or erosion and stormwater quality control plan.” City Code § 7.7.1507 B.

241. The City of Colorado Springs Code states that, “[w]henver the City Engineer has inspected or caused to be inspected any grading or land disturbance and has determined

noncompliance with this part, the City Engineer shall cause enforcement measures and/or other remedies to be undertaken.” City Code § 7.7.1508.

242. Section 7.7.1509 of the City of Colorado Springs Municipal Code identifies enforcement measures and remedies available to the City Engineer in determining noncompliance with stormwater quality control plans and related BMPs. City Code § 7.7.1509.

243. Pursuant to these requirement, the City’s DCM Vol. 2 describes inspection requirements and enforcement practices. DCM Vol. 2 (2014) at 7-18 to 7-24; DCM Vol. 2 (2002) at 3-9 to 3-10 and 3-16 to 3-17.

244. The DCM Vol. 2 directs the City to “take enforcement action on a site as necessary to ensure proactive compliance with BMP implementation and maintenance.” DCM Vol. 2 (2014) at 7-22; DCM Vol. 2 (2002) at 3-9 to 3-10 and 3-16 to 3-17.

245. The City’s DCM Vol. 2 also states the requirements for initial inspections and compliance inspections. DCM Vol. 2 (2014) at 7-18; DCM Vol. 2 (2002) at 3-9 to 3-10 and 3-16 to 3-17. One purpose of the initial inspection is “to confirm that the approved plan is being implemented.” DCM Vol. 2 (2014) at 7-18.

246. The DCM Vol. 2 states that on compliance inspections, the City’s inspector “verifies that the latest self-inspection report is accurate and that BMPs are functioning according to design and only allowable discharges are occurring. The inspector also verifies that the Erosion and Stormwater Quality Control Plan is updated to reflect current BMP activity.” DCM Vol. 2 (2014) at 7-18.

247. The DCM Vol. 2 lists the City’s enforcement steps when there is no immediate danger to public safety, property, or water resources, including steps to take to correct and follow

up on a documented violation. DCM Vol. 2 (2014) at Table 7-2 (Possible Enforcement Options); DCM Vol. 2 (2002) at 3-16 to 3-17; City Code § 7.7.1509.

248. The DCM Vol. 2 directs inspectors to take “more aggressive action” than the Table 7-2 steps “when there are impacts on public safety, property or water resources.” DCM Vol. 2 (2014) at 7-23; DCM Vol. 2 (2002) at 3-16 to 3-17; City Code § 7.7.1509. Situations with such impacts could include, but are not limited to “the wash out of channels . . . deposition of sediment that causes or has the potential to cause property damage, or the deposition of materials into water ways.” DCM Vol. 2 (2014) at 7-22.

249. The DCM Vol. 2 also directs inspectors to take “more aggressive action” for enforcement when there are chronic or frequent problems at the site. DCM Vol. 2 (2014) at 7-22.

250. The City failed since at least February 7, 2013, “to ensure compliance with requirements as defined in [City of Colorado Springs] ordinances and rules and approved plans, and to ensure effective operation and maintenance of BMPs.” Permit, Part I.B.1.d.(3); 2004 Permit, Part I.B.1.b.(3)-(4); 1997 Permit, Part I.B.1.b.(3)-(4).

251. The City has failed since at least February 4, 2013, to comply with inspection and enforcement requirements of the Municipal Code and the provisions in the DCM Vol. 2. City Code §§ 7.7.1507 B, 7.7.1508 and 7.7.1509; DCM Vol. 2 (2014) at 7-18 to 7-24 and Table 7-2 (Possible Enforcement Options); DCM Vol. 2 (2002) at 3-9 to 3-10 and 3-16 to 3-17.

252. The City failed since at least February 7, 2013, to take corrective enforcement actions outlined in the Municipal Code and the DCM Vol. 2 in response to serious design, implementation, and maintenance problems at construction sites.

253. By allowing discharges that are not in accordance with the City's SMP and other provisions of the Permit since at least April 7, 2015, the City has violated Part I.A.1 of its Permit. Permit, Part I.A.1; 2004 Permit, Part I.A.1.; 1997 Permit, Part I.A.1.

254. Unless enjoined by this Court, the City's violations will continue. Pursuant to 33 U.S.C. § 1319(b) and CRS § 25-8-607, the City is subject to injunctive relief to prevent any continued violations of the Permit.

255. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and Colorado Water Quality Control Act, CRS § 25-8-101 et seq., the City is liable for civil penalties not to exceed the statutory maximum for each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendant as follows:

1. Pursuant to 33 U.S.C. § 1319(b), enjoin the City from any and all ongoing or future violations of the Clean Water Act by ordering compliance with the Act, the stormwater regulations (40 C.F.R. §122.26), and the City's Permit;
2. Pursuant to CRS § 25-8-607, enjoin the City from any and all ongoing or future violations of the Colorado Water Quality Control Act and the City's Permit by ordering compliance with the CWQCA and the Colorado Discharge Permit Regulations 61;
3. Pursuant to the City's Permit, Part I.B.1, enjoin the City to develop, implement, and enforce its Stormwater Management Program as required by the Permit.

4. Pursuant to the City's Permit, Part I.A.1., enjoin the City from any and all ongoing discharges that are not in accordance with the City's Stormwater Management Program and other provisions of the Permit.

5. Pursuant to the City's Permit Part I.B.2, enjoin the City from any and all ongoing or future violations of the City of Colorado Springs Municipal Code §§ 3.8.101 et seq. (Stormwater Quality Management and Discharge Control Code), and §§ 7.7.1501 et seq. (Grading Plans and Erosion and Stormwater Quality Control Plans) (in particular §§ 7.7.906 et seq.);

6. Pursuant to all requirements as set forth in Part I. and Part II. of the City's Permit, 2004 Permit, and 1997 Permit, enjoin the City from any ongoing or future violations, and order the City to take all steps necessary to redress or mitigate the impact of its violations;

7. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. Part 19, and CRS § 25-8-101 et seq., assess civil penalties against the City, as permitted by law;

8. Award Plaintiffs their costs and disbursements in this action; and

9. Grant Plaintiffs such other and further relief as the Court deems just and proper.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

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*Counsel of Record

Memorandum

TO: Rulemaking Docket

FROM: Keith Barnett, US EPA, Environmental Engineer

SUBJECT: Combustion in a Cement Kiln and Cement Kilns' Use of Tires as Fuel

DATE: April 25, 2011

A cement kiln that combusts any non-hazardous solid waste is subject to regulation as a Commercial or Industrial Solid Waste Incineration (CISWI) unit pursuant to section 129 (g) (1) of the Clean Air Act. In order for a cement kiln to be classified as a CISWI unit, it must have an input that is a non-hazardous solid waste, and the cement kiln must "combust" the solid waste. EPA has recently promulgated a definition of non-hazardous secondary materials which are solid wastes. See 76 FR 15456 (March 21, 2011).

This memorandum describes the Portland cement production process and discusses whether certain secondary materials used in that process are combusted in the kiln. This memorandum also addresses the question of whether tires burned by certain cement kilns in their performance testing would have been defined as solid wastes under the recently-promulgated definition of non-hazardous secondary materials that are solid wastes had that definition applied at the time of the burning.

Since combustion is not defined in the CAA, we use a common definition of combust which is "an act or instance of burning" or "a chemical process (as an oxidation) accompanied by the evolution of light and heat".¹

Basic Kiln Process

In a cement kiln, there are two types of inputs, fuels and ingredients. Fuels provide the energy necessary to produce the heat required to raise the temperature of the ingredients to the level required for clinker formation. Ingredients provide the materials that make up the actual clinker mass. The ingredients are also called kiln feed or raw meal.

Figure 1 presents a schematic of a typical long wet or dry cement kiln. Ingredients are introduced into the back or cold end of the kiln at 300 to 500 °F (cold here being a relative term).² The materials gradually move down the kiln over a period of 60-90 minutes and increase in temperature until they reach the temperature required for clinker formation (about 2600 to 2700 °F). The ingredients undergo several different reactions as the temperature increases. It is important that the mix move slowly enough to allow each reaction to be completed at the

¹ Webster's Ninth New Collegiate Dictionary. Merriam-Webster Inc. 1990

² Environmental Progress (vol. 11, No. 1) February, 1992, Petroleum and Petrochemical Waste Reuse in Cement Kilns, David Gossman

appropriate temperature. Because the initial reactions are endothermic (energy absorbing), it is difficult to heat the mix up to a higher temperature until a given reaction is complete.³

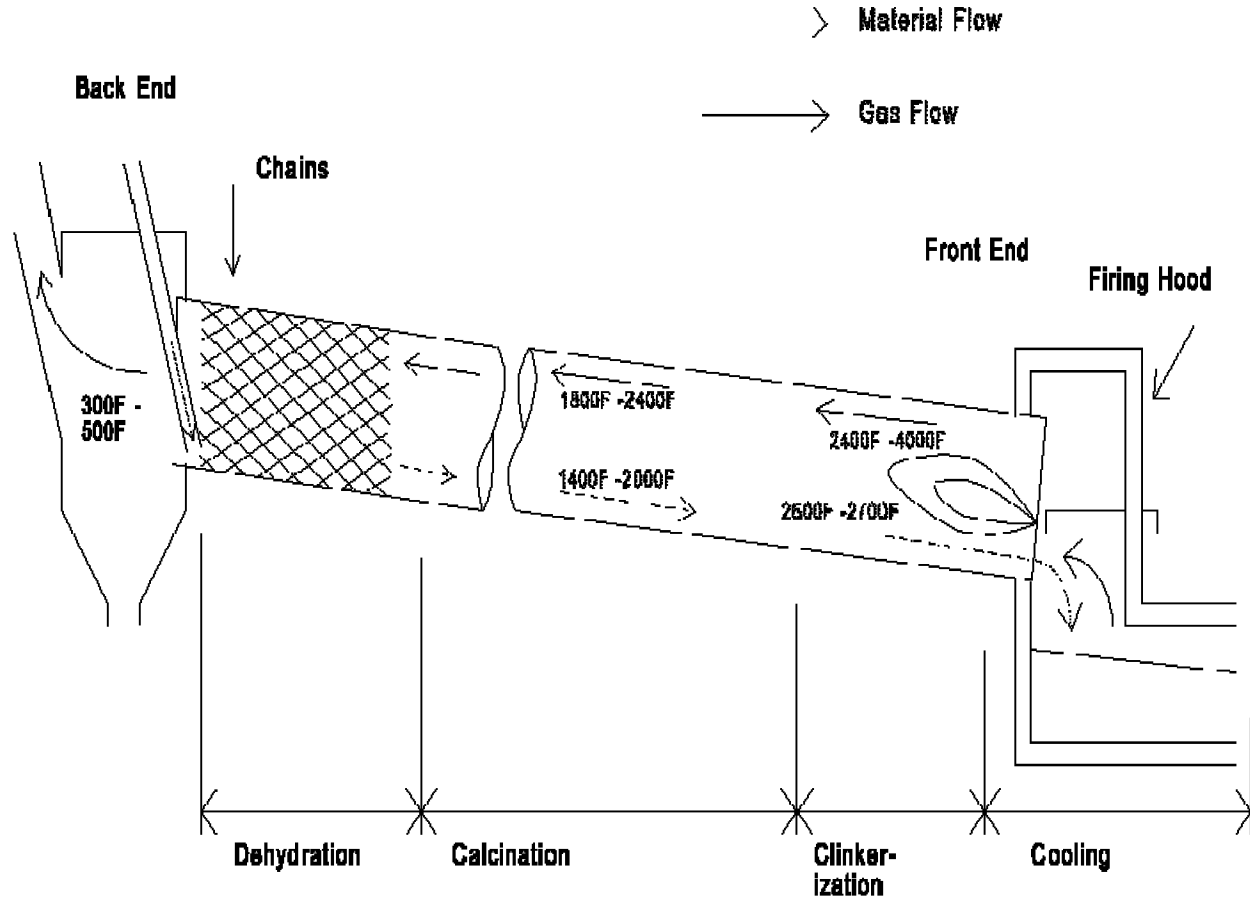


Figure 1. Schematic of a long cement kiln

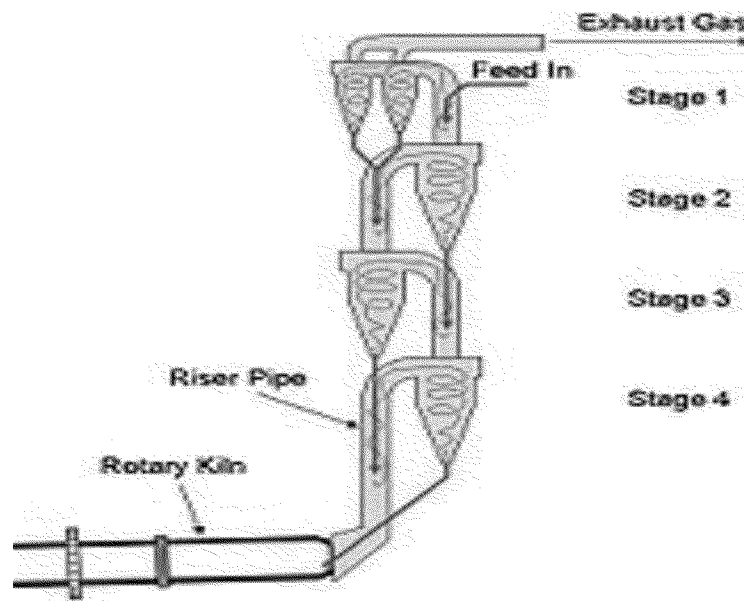
In contrast to ingredients, fuels are introduced into the hot sections of the kiln (either the front end or mid kiln) where gas temperatures are 1800 to 4000 °F. At these high temperatures the fuels immediately burn when introduced into the kiln. Fuels are never introduced into the cold end of the kiln. If they were, they would slowly heat resulting in creation of significant amounts of carbon monoxide emissions and a loss of fuel heating value.

The process in a preheater or preheat precalciner kiln is similar to a long kiln. Ingredients (feed) enter the top of the preheater tower, which is the equivalent of the cold end of a long kiln (*see further discussion below*).³ The raw meal passes down the tower while hot gases rise up, gradually heating the raw meal. By the time the materials have reached the bottom of the preheater tower the ingredients have partially calcined.³ A preheater tower is likely to have 4-6 stages.

³ Northwestern University. The Science of Concrete. <http://iti.northwestern.edu/cement/>

Fuels enter a preheater kiln at the front end of the kiln and also may be introduced at the bottom of the preheater tower. In the case of the precalciner kiln, fuel is introduced into a separate vessel typically located between the last two stages of the preheater tower. However, as is the case with a long kiln, the fuels are introduced into high temperature zones where combustion of the fuels occurs.

Figure 2. Preheater or Preheater/Precalciner kiln



Combustion does not occur in the cold end of the cement kiln. As explained above, materials⁴ placed in the cold end of the kiln are heated gradually until they reach the temperature where clinker formation takes place (as opposed to the hot zone of a cement kiln where higher temperatures are applied as quickly as possible, not gradually). This is not a chemical process marked by the evolution of light and heat. Rather, it is analogous to cooking as opposed to burning.

In a letter dated April 8, 2011, the Portland Cement Association (PCA) questioned whether the cold end of a preheater/precalciner kiln engages in combustion when ingredients are added at that point. The top of the preheater tower in a preheater/precalciner kiln functions identically to the cold end of a long kiln. Ingredients are gradually heated – cooked rather than burned. Again, this is not a chemical process marked by the evolution of light and heat. As such, the top of the preheater tower equates to the cold end of a long kiln and the ingredients are not combusted in those areas of the kiln.

⁴ We note again that fuels are never placed in the cold end of cement kilns (including preheaters).

PCA's April 8 letter also raised a related question concerning ingredients added at different levels of the preheater tower, rather than the top of the tower. (See April 8 letter p. 3 asking whether ingredients placed in "preheater towers that use the heat produced by the kiln to preheat the ingredients as they move through the various stages of the tower" would be combusted.) We believe that until the material reaches a high temperature zone of the kiln, which is the zone where fuel is being added, combustion does not occur for the reasons just given: ingredients are being heated gradually through a controlled process. For example, some long kilns feed tire fuel at a mid-kiln location, so combustion occurs at mid-kiln. However, the colder parts of the kiln represent areas where materials are still being gradually heated. In preheater/precalciner kilns, this would also apply to the various level of the preheater tower until the materials reached a point where fuel is being introduced, either into a precalciner or the feed shelf of the rotary part of the preheater kiln.

Ingredients processed in high temperature areas of the kiln

Cement kilns process many secondary materials as ingredients, and almost always do so by introducing these materials into the cold end of the cement kiln (where combustion of ingredients does not occur, as explained above). In its April 8 letter, PCA notes that ingredients are sometimes introduced into the hot (fuel) end of the kiln, and asks whether those materials are combusted within the meaning of CAA section 129 (g).

The high temperature regions of cement kilns can engage in combustion, as when fuels are burned. However, the secondary material ingredients used by cement kilns would not be combusted, as explained below.

Two types of materials are removed from the kiln exhaust gases, typically by the air pollution control devices for particulates, and returned to the process as ingredients. The first is incompletely calcined material that is recycled back into the kiln as a normal part of the clinker manufacturing process. The second is other fine-grained, solid material removed from the system to allow the clinker to meet specific quality standards or to maintain process stabilization. See PCA Letter of April 8, 2011, p. 3. These materials are often referred to as cement kiln dust.

The PCA letter noted that both of these materials may be reintroduced to the kilns in various places, depending on the kiln design and process. However, in this letter the PCA noted that in the case of preheater, preheater/precalciner, and long dry kilns that CKD is mixed with the raw meal feed and enter the cold section of the kiln. Therefore, these materials would not be considered to be combusted for the reason stated previously.

However, as noted in the April 8 PCA letter, in the case of wet kilns, cement kiln dust may be added to higher temperature zone regions (mid-kiln and the hot end). Cement kiln dust in this case mainly consists of a material that has previously been heated and even partially calcined. Therefore, this material would be expected to be inert from the standpoint of combustion, i.e., it would not oxidize producing heat and light. In fact, cement kiln dust injected in hot end of the kiln within or in close proximity to the flame has the effect of cooling the

flame.⁵ This demonstrates the fact that these materials do not create heat and thus do not combust.

In its April 8 letter, PCA states that the only ingredients presently placed in kilns' combustion zones (occasionally) are the cement kiln dusts. However, PCA raises the possibility of other hypothetical ingredients being added to a cement kiln's combustion zone. It is not necessary to address hypothetical possibilities here. In addition, we believe the potential for placing non-inert ingredients into kiln combustion zones is unlikely for two reasons. First, the raw materials must be chemically homogeneous.⁶ Since ingredients must be combined and ground together in the raw mill and thoroughly mixed, feeding separate ingredients into other areas of the kiln would mean less thorough mixing of the ingredients. In addition, for the reason discussed on page 3 (necessity to heat ingredients gradually), introducing raw materials into a hot section of the kiln would be expected to reduce kiln thermal efficiency. It is also worth noting that non-hazardous secondary materials used as an ingredient in a combustion unit are not solid wastes, 40 CFR section 241.3 (b), assuming the legitimacy criteria in section 241.3 (d) are satisfied.

Tires Used as Fuel

As part of the development of the CISWI rule, we requested additional information on the tire-derived fuels used by all cement kilns in the proposed CISWI rule data base based on their historic practices. This included over 30 cement kilns that previously reported using some type of tire derived fuels and included all the larger cement companies.⁷ Specifically, the ICR asked these questions regarding tires combusted during the emissions tests for the kilns: a) what is the source of the whole tires the kiln combusted; b) did they come from tire piles or landfills, or from an established tire program, defined in the ICR as "one which harvests tires from vehicles and businesses, and then manages the tires carefully so they are not thrown away between collection and eventual use as fuel, for example by use of a tracking system", and c) if the kiln received tires from sources other than an established program, did they undergo processing to produce a tire derived fuel?⁸

In general, virtually all of the respondents indicated that they had obtained all of the tires they burned from established tire programs (as defined in the ICR). However, the kilns acknowledged that they could not account for the source of every tire provided by these programs. PCA, in its April 8 letter likewise indicated that "[s]ome companies obtain tires from brokers and do not know the source of all tires" (April 8 Letter, n. 5). Some of the ICR

⁵ PCA R&D Serial No. 2728a, A Qualitative Examination of the Control of Major Gaseous Pollutants Generated in Portland Cement Kilns. Walter L. Greer and Garth J. Hawkins, Portland Cement Association, 2004

⁶ See http://en.wikipedia.org/wiki/Portland_cement

⁷ See CISWI ICR Follow Up Request for Information – (ICR No. 2286.01; OMB Control No. 2060-0616; EPA Form No. 5900-122). January 28, 2011.

⁸ The ICR also asked if the kiln had been burning on-specification or off-specification used oil, and whether tires that had been physically landfilled were too damaged or otherwise contaminated to be suitable for burning by a cement kiln.

respondents further indicated that they knew that these established programs occasionally (for example, once a year, or several days a year) would obtain tires from sources other than commercial sources, tire dealerships and other standard collection points. Examples mentioned in the responses are the annual tire ‘amnesty day’ or other cleanup programs whereby established programs (or in one instance, the kiln itself) accepts tires from individuals.

It is EPA’s position that ultimate users are not responsible for knowing the source of all tires obtained from an established tire collection program. The certification required by 40 CFR section 60. 2175 (w) requires a non-waste tire user to certify that tires were obtained from an established tire collection program, that the tires are not discarded and are handled as valuable commodities from the point of removal through arrival at the burning facility. EPA does not interpret this language as requiring knowledge of each individual tire as this is a practical impossibility. In certifying, users also should not assume that tires from established programs which participate in occasional cleanup day are discarded – both because there is no information that the tires from the cleanup efforts were discarded (and these programs are designed to prevent discarding) and whether the kiln received tires from the sporadic cleanup days in any case. Rather, EPA interprets the certification requirement to be satisfied if the user deals with an established tire collection program (as defined in Part 241) which program can provide the user with reasonable assurance that it manages tires carefully from point of collection to point of burning and which does not receive tires which have been abandoned in landfills or otherwise abandoned. Virtually all of the respondents to the ICR stated that they dealt with such established tire collection programs, and provided information reasonably supporting that conclusion (or otherwise provided sufficient information from which EPA determined that the tires came from established tire management programs). In those instances where the kilns indicated that some of the tires they received from an established tire program had been discarded or suspected that that was the case, EPA counted the kiln as a CISWI (had the solid waste definition applied at the time of the performance test) in this analysis.

The responses are summarized (by quotation or near literal paraphrase) in the following table:

Company	Plant Location	Type of Tire Fuel	Tire Sources and Processing
Ash Grove Cement	Inkom	Whole Tires	— Receives tires from ‘four county landfills’ serving as staging areas (areas where tires are collected for recycling rather than disposal) which landfills are ‘designated to receive and store tires’ by State of Idaho as part of the used tire management system (which system is ‘distinct from the municipal solid waste management system’) ⁹

⁹ Staging of tires at landfills –using the landfill as a collection point without disposing of the tires in the landfill (or otherwise) – is an acceptable means of avoiding their discard. The definition

			<ul style="list-style-type: none"> ☐ Sufficient information to determine that tires come from an established program and that kiln would not have been a CISWI
Ash Grove Cement	Durkee, Oregon	Whole Tires	<ul style="list-style-type: none"> ☐ Receives whole tires from seven sources, two are landfills which have areas designated as tire staging areas ☐ Oregon regulations for used tires similar to Idaho ☐ Sufficient information to determine that tires come from an established program and that kiln would not have been a CISWI
Ash Grove Cement	Midlothian	Whole Tires	<ul style="list-style-type: none"> ☐ Receives tires from one privately owned and operated waste management facility. ☐ Kiln has anecdotal information that supplier occasionally picks up tires from illegal dumpsites, though most (but not all) of these tires are unsuitable for Ash Grove and are shredded and sent elsewhere. ☐ Would probably have been a CISWI
Ash Grove Cement	Leamington, Utah	Whole Tires	<ul style="list-style-type: none"> ☐ Burns only Tire chips. No information on ultimate source of tires. ☐ Per other responses (i.e. Holcim Devil's Slide), UT has a state licensed program which oversees safe collection and management of tires ☐ Based on features of state law, tires come from an established tire collection program and kiln would not have been a CISWI

of “established tire management programs” in section 241.2 allows landfills to be used as staging areas as part of collection programs. Programs with landfill staging of tires can be “a comprehensive collection system that ensures scrap tires are not discarded and are handled as valuable commodities ... from the point of removal from the vehicle through arrival at the combustion facility.” .” A system which utilizes staging areas to collect tires for re-distribution, even if that staging area happens to be located at a landfill, meets this definition if the tires are placed in the staging area on arrival and properly handled prior to delivery at the combustion facility. For example, in this instance, Ash Grove noted its understanding that “all counties (sic) landfills purchased van trailers for the sole purpose of accumulating tires as part of the state’s used tire management system” and that Idaho state law provides that landfills can be used as storage collection points for used tires under the state’s used tire management system.

Ash Grove Cement	Seattle	Whole Tires	<ul style="list-style-type: none"> — Receives tires from one privately owned and operated tire source. State of Washington regulates transport and storage of tires □ Based on features of state law, tires come from an established tire collection program and kiln and kiln would not have been a CISWI
Buzzi	Oglesby	Whole Tires	<ul style="list-style-type: none"> — Vast majority of whole tire fuel supplied from brokers that obtained tires directly from the generators (tire stores, etc.) and meets definition of established tire program □ Program regulated by State of Illinois □ Would not have been a CISWI
Buzzi	Pryor, Oklahoma	Whole Tires	<ul style="list-style-type: none"> — Unable to determine , but does not presently burn TDF at all □ Not a CISWI based on existence of OK rules for tire collection programs noted by other cement kilns (which assure safe management after collection and predominantly remove tires from vehicles)
Buzzi	Maryneal	Whole Tires	<ul style="list-style-type: none"> — Vast majority of whole tire fuel supplied from brokers that obtained tires directly from the generators (tire stores, etc.) ‘To the best of our knowledge, this TDF was from an established management program administered under Texas Administrative Code Title 30, Part 1, Chapter 328, Subchapter F.’ □ Would not have been a CISWI
Cal Portland	Colton	Whole Tires	<ul style="list-style-type: none"> — Established tire management program run by county. The county’s main tire source was not specified in the response but is likely tire shops, etc. □ This county also collects tires from the public and from illegal tire piles a few times a year. These tires are sorted and some eventually are sent to the cement kiln. □ Would probably have been a CISWI due to known use of discarded tires
Cemex	Demopolis	Whole	<ul style="list-style-type: none"> — Tires are sourced through tire brokers

		Tires	through an established tire management program
Cemex	Brooksville - North	Whole Tires	<input type="checkbox"/> The ultimate source of the tires is not specified, but the tire must meet certain CEMEX specifications. The company cannot rule out the possibility that landfilled or disposed tires may be included <input type="checkbox"/> CEMEX does partner with local municipalities to provide an outlet for amnesty tire collections which are designed “to avoid illegal tire dumps” and consist of individuals bringing tires to a kiln and not being charged a disposal fee. <input type="checkbox"/> All CEMEX kilns use only whole tires <input type="checkbox"/> Would not have been CISWIs
Cemex	Miami	Whole Tires and TDF	
Cemex	Brooksville-South	TDF	
Cemex	Clinchfield	TDF	
Cemex	Knoxville	Whole Tires	
Cemex	Blacones	TDF	
Essroc	Bessemer	Whole Tires	<input type="checkbox"/> Has always used an established tire management program, ‘one which harvests tires from vehicles and businesses, and then manages the tires carefully so they are not thrown away between collection and eventual use as a fuel’ <input type="checkbox"/> Would not have been a CISWI
Essroc	Frederick	Whole Tires	
Florida Rock	Newberry	Whole Tires	<input type="checkbox"/> Receives tires from a private company. Tires are collected directly from the source that removes the tire from the vehicle. <input type="checkbox"/> Would not have been a CISWI
Holcim	Midlothian	TDF	<input type="checkbox"/> Tire Chips obtained from the Ada OK facility with no other processing <input type="checkbox"/> OK has a tire cleanup program, and facility also accepts tires from businesses and tire stores; never from landfills <input type="checkbox"/> Would not have been a CISWI due to use of tire fuel (but is CISWI based on other secondary fuels).
Holcim	Morgan	TDF	<input type="checkbox"/> Receives tires from a private company under a State program. The tires are processed into tire chips at Ada facility <input type="checkbox"/> Holcim Ada does not accept landfill tires (see previous write-up for Midlothian)

			<ul style="list-style-type: none"> — Sufficient information provided to determine that obtains tire from an established program □ Would not have been a CISWI due to use of tire fuel (but is CISWI based on other secondary fuels).
Holcim (This facility was not on the CISWI List)	Ada	Whole Tires	<ul style="list-style-type: none"> — Tires from businesses and tire stores and from Oklahoma clean-up program. □ Chips tires on site for other facilities. □ Holcim in general does not accept landfill tires □ Would not have been a CISWI
Holcim (This facility was not on the CISWI List)	Hagerstown	Whole Tires	<ul style="list-style-type: none"> — Tires from businesses and tire stores. □ Holcim in general does not accept landfill tires □ Sufficient information provided to determine that obtains tire from an established program and would not have been a CISWI
Lafarge	Roberta	TDF	<ul style="list-style-type: none"> — Sources from tire manufacturer or a local retailer under an established tire management program □ Would not have been a CISWI
Lafarge	Joppa	Whole Tires	<ul style="list-style-type: none"> — Tires from a variety of sources including tire manufacturers, tire retail outlets, tire collection forms, auto and racing organizations, and tire processors. □ Well established tire management program approved by the State of South Carolina □ On rare occasions the plant participates in community cleanup and/or state funded cleanup efforts. □ Would not have been a CISWI
Lafarge	Tulsa	Whole Tires	<ul style="list-style-type: none"> — Tire brokers who process tires under established tire management programs. □ A State program allows reimbursement if 5 percent of the tires come from tire piles, landfills, or community clean-up efforts. (No mention if Lafarge or their tire brokers participate) □ Would not have been a CISWI, since it obtains tires from an established tire collection program and there is no

			indication discarded tires are burned by the kiln
Lafarge	Whitehall	Whole Tires	<ul style="list-style-type: none"> — Sources from tire dealers or automotive shops under an established tire management program <input type="checkbox"/> Would not have been a CISWI
Lafarge	Harleyville	Whole Tires	<ul style="list-style-type: none"> — Tires from a variety of sources including tire manufacturers, tire retail outlets, tire collection firms, auto and racing organizations, and tire processors. <input type="checkbox"/> Well established tire management program approved by the State of South Carolina <input type="checkbox"/> Would not have been a CISWI
Lafarge	Seattle	Whole Tires	<ul style="list-style-type: none"> — Tires obtained from retailers in an established tire management program under State regulation <input type="checkbox"/> Would not have been a CISWI
Lehigh Cement	Leeds	Whole Tires	<ul style="list-style-type: none"> — Use an established tire management program <input type="checkbox"/> All Lehigh plants use whole tires <input type="checkbox"/> Would not have been a CISWI
Lehigh Cement	Redding	Whole Tires	
Lehigh Cement	Evansville	Whole Tires	
Lehigh Cement	York	TDF	
Mitsubishi Cement	Lucerne Valley	Whole Tires	<ul style="list-style-type: none"> — Established tire management program but no absolute assurance that some tires could have been discarded <input type="checkbox"/> Would not have been a CISWI
Monarch Cement	Monarch	Whole Tires	<ul style="list-style-type: none"> — Established tire management program <input type="checkbox"/> Would not have been a CISWI
National Cement of CA	Encino	TDF	<ul style="list-style-type: none"> — Tire chips and tire fluff. Fluff is from a facility that produces crumb rubber products. <input type="checkbox"/> Ultimate tire source not specified. <input type="checkbox"/> Status not certain, but reasonable to assume not a CISWI because of California rules establishing tire management programs and due to producing TDF to specification

Conclusion

Based on this information presented above, we conclude that no cement kiln would have been classified as a CISWI unit based on the use of secondary materials as an ingredient had the solid waste definition in Part 241 been promulgated at the time of the testing or the time of promulgation of the final NESHAP. In addition, all cement kilns surveyed obtained tire fuels from an established tire collection program. With the exception of the facilities that either acknowledged accepting tires that had been discarded or provided information from which some acceptance can reliably be inferred, the use of tire derived fuel by itself would not have resulted in a cement kiln being defined as a CISWI unit.

To: Bailey, Ethel[Bailey.Ethel@epa.gov]
From: Bodine, Susan
Sent: Tue 11/7/2017 1:06:49 PM
Subject: FW: Updated materials
Pre Administrator Pruitt Meeting Comments from CAG and JustMomsStL Version 02.docx
REVISED 11-07-2017 Administrator WL Briefing (DRAFT).pptx

From: Cozad, David
Sent: Monday, November 6, 2017 3:39 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Stoy, Alyse <Stoy.Alyse@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Peterson, Mary <Peterson.Mary@epa.gov>
Subject: Updated materials

Hi,

Here is a revised/updated ppt on Westlake. Also attached is correspondence to Albert Kelley from the CAG and JustMoms group, laying out some of their concerns with the draft Focused Feasibility Study.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

If you have any questions about these materials or need anything else from us in advance of the briefing tomorrow, please let us know.

Dave Cozad

Regional Counsel

Region 7

913-551-7587

cozad.david@epa.gov

Mr. Albert Kelly
EPA Superfund Task Force

November 5, 2017

Mr. Kelly

It is our understanding that you are meeting with Administrator Pruitt this week. On behalf of our community, the CAG and Just Moms StL would like to highlight some inconsistencies and concerns regarding the current FFS for West Lake Landfill that may inform your actions and recommendations moving forward.

- A. Despite the PRPs claim that “All of the following remedial alternatives ... meet EPA’s criteria for overall protection of human health and the environment.”¹, we believe that this conclusion cannot be reached based on a number of key omissions in the FFS analysis as pointed out by Region 7 in their Comment Letter dated October 26, 2017:
1. Not included: “is an evaluation of the potential risk that an SSE could cause a release of particulates from OU1 or an estimate of the resulting risk should a release occur.”²
 2. Not included: Presence of “petroleum soaked soils” mixed with RIM in Area 1³ and the risk of meeting with a SSE
 3. Not included: Reasonable Maximum Exposure (RME) to evaluate exposures to residents or workers. These are missing. Averages were used instead of RME.⁴
 4. Questionable Parameters Used in Modeling: Reductions in the volume of gases in the soils used in the modeling are suspected of generating an underestimate of potential radon releases.⁵
 5. The risks identified by the ORD report⁶ have not been fully addressed or nullified: The ORD report states that even a properly maintained Cap would not be protective of our community.
- B. Evaluation of earthquake risks at the West Lake Landfill appears deficient:
The MDNR estimates the probability of a repeat of the 1811-1812 (magnitude 7.5-8.0) earthquake is 7-10%. According to MDNR: About 75 percent of the estimated reoccurrence time for a magnitude 7.6 earthquake has elapsed since the last quake of this size occurred in 1812.”⁷ We must assume that should an earthquake hit this area, our First Responders would be focused on rescue and recovery, and not on tracking and cleaning Radon and Radioactive particulates ejected from West Lake Landfill as the soils and cap undergo liquefaction. Therefore, it is not clear to the CAG how the cap-and-leave design will prevent the ejection of

¹ FFS August 25, 2017, Executive Summary, Page 4, #1

² US EPA Region 7 October 26, 2017 Comment Letter, Page 1, #3

³ EMSI February 25, 1997 Superfund Document 40056510

⁴ US EPA Region 7 October 26, 2017 Comment Letter Page 8, #50, #56

⁵ US EPA Region 7 October 26, 2017 Comment Letter, Page 5-6, #33-#37

⁶ EPA Office of Research and Development, National Risk Management Research Laboratory, Engineering and Technical Support Center - March 28, 2017

⁷ Facts About the New Madrid Seismic Zone, Missouri Department of Natural Resources. Accessed Nov. 2017. <https://dnr.mo.gov/geology/geosrv/geores/techbulletin1.htm>

sand, mud, radioactive and non-radioactive contaminants of concern at the landfill, as well as preventing slumping that may occur, deteriorating the gas management system that could lead to a surface fire that could spread radioactive particulates for miles. Further, the liquefaction will allow mobilization of the radioactive contamination into the groundwater, which will make it significantly more difficult and expensive to remove in the future. We therefore respectfully recommend the Full Removal Remedy be selected.

C. Full Removal, though more expensive on the front end, has been shown at other sites to be the most cost effective and protective of human health.

Shattuck Superfund Site in Denver, Colorado: The Shattuck Superfund site contained several Operable Units, including OU-8 that was **contaminated with Radium**. The EPA implemented a ROD in 1992 that called for containment of the radioactive material in an onsite monolith. A five year review found Radium leaving the site. A ROD Amendment was initiated in 2000 that called for the excavation and offsite disposal of the radioactive material⁸. **The EPA goes on to acknowledge that “Although all of the alternatives would protect human health and the environment in the short-term, only Alternative 3 which calls for the removal of the waste from the site to an approved disposal facility can ensure long-term protectiveness⁹.”** EPA Region 8 eventually determined that a decision reducing the Operation & Maintenance and reliance on institutional controls would result in the greatest overall protectiveness.

D. DOE Responsibility and Rules:

The radioactivity dumped at the West Lake Landfill was referenced by the NRC (now DOE) as being licensed material in its 1995 letter to the EPA. Therefore, the Radioactive Waste Management Manual (RWMM) should be applicable at the West Lake Landfill. The RWMM states, “The requirements of this Manual apply to all new and existing DOE radioactive waste management facilities, operations, and activities.” The DOE manual clearly states that low-level radioactive waste should not be located in a floodplain, tectonically active area, or in the zone of water table fluctuation. West Lake Landfill’s location fails to meet this standard on all accounts and no remedy other than Full Removal can comply.

E. Cost Comparison:

Past FS documents have shown a range of costs for the alternatives. We respectfully submit the chart below which shows the Full Excavation having a range of cost between \$443M and \$710M. This particular Remedy has a 60% Contingency adder vs. the Cap Only Remedy which has a 30% Contingency adder. If the Cap only Remedy had the same adder as Full Excavation, its cost would have been \$92M, thus closing the cost gap.

⁸ Shattuck Record of Decision Amendment (2000) <https://semspub.epa.gov/work/08/301191.pdf>

⁹ Responsiveness Summary for the Proposed Plan for an Amendment to the Record of Decision, Denver Radium Operable Unit #8, Shattuck Site, Executive Summary (2000)

Per FFS Appendix K					
<u>Preliminary Estimated Capital Costs</u>	<u>FFS ROD Remedy Alternative</u>	<u>FFS UMRCA Cap Remedy Alternative</u>	<u>Partial Excavation (52.9 pCi/g) Remedy Alternative</u>	<u>1,000 pCi/g Remedy Alternative</u>	<u>Full Excavation (7.9 pCi/g) Remedy Alternative</u>
<u>Cost Range</u>					
Cost without Contingency	\$57,750,000	\$68,500,000	\$173,030,000	\$221,850,000	\$443,180,000
Cost with Contingency	\$75,000,000	\$96,000,000	\$280,000,000	\$374,000,000	\$710,000,000
Contingency Uplift Percent	30%	40%	62%	69%	60%

F. Time to Implement Remedy:

We find it curious that the annual expenditure by the PRPs is the same for each Remedy. We find this to be inconsistent with EPA Region 7 prior statements that there is not a limit to the amount of expense the PRPs are expected to bear per year. We have found that the PRPs have not been behaving as good neighbors, causing many delays in the resolution of this site. Their stall tactics with EPA, the State of Missouri, and their attacks on our efforts by creating and funding a “grass roots” movement against remediation should not be rewarded with low annual cash outlays.

G. Air Traffic Safety:

Republic Services has successfully controlled birds at similarly situated sites, including an operational landfill within 10,000 feet of an airport in CA¹⁰

After 27 years of waiting for the NRC/AEC/DOE to address this site, and another 27 years waiting for Superfund to address this site, this community deserves the safest and most permanent solution for this site; a solution that takes into consideration our future health and economic success. Any solution which exposes us to risk from off-site migration of waste be it natural or man-made disaster, any solution which is based in any part on incomplete skewed data, or any solution which requires 1000 years of monitoring and maintenance is unacceptable to this community.

We hope you found this memo helpful and we look forward to working with you in the future to bring a safe and permanent Remedy to the West Lake Landfill / Bridgeton Landfill Complex.

Sincerely,

Harvey

Harvey Ferdman
Chair, West Lake Landfill / Bridgeton Landfill CAG

Ex. 6 - Personal Privacy (cell)

Dawn

Dawn Chapman
Just Moms StL

Ex. 6 - Personal Privacy (cell)

¹⁰ Demonstration of the Continued Effectiveness of the Bird Control Program at the Forward Landfill, Manteca, California – 2012-2013. Prepared by LGL Limited Environmental Research Associates for Republic Services, Inc. (2013) http://moenvironment.org/files/FLE_DSEIR_APPX_C.pdf

To: Starfield, Lawrence[Starfield.Lawrence@epa.gov]
From: Bodine, Susan
Sent: Tue 10/17/2017 10:01:11 PM
Subject: RE: Westlake - Briefing for Administrator

No attachment.

Ex. 5 - Attorney Client

From: Starfield, Lawrence
Sent: Tuesday, October 17, 2017 6:00 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: Westlake - Briefing for Administrator

Susan,

A briefing for the Administrator on remedial alternatives for the Westlake SF site is scheduled for November 7. Ex. 5 - Attorney Client I'm attaching a briefing paper from July, FYI, but let me know if you'd like us to set up a pre-brief for you.

Ex. 5 - Attorney Client

Larry

To: Forsgren, Lee[Forsgren.Lee@epa.gov]; Sarah Greenwalt (greenwalt.sarah@epa.gov)[greenwalt.sarah@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Samantha Dravis (dravis.samantha@epa.gov)[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Bodine, Susan
Sent: Mon 10/23/2017 1:17:36 PM
Subject: first cut at definition
WOTUS Definition.docx

This is a first attempt to distill the guidance we received into reg text.

Where possible it tracks current regs and the 2008 guidance. It is **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

The preamble notes are just to provide further explanation of the concepts.

I have started working on more comprehensive preamble language.

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Fotouhi, David[Fotouhi.David@epa.gov];
Forsgren, Lee[Forsgren.Lee@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Bodine, Susan
Sent: Sun 10/15/2017 9:25:53 PM
Subject: Straw man 2 and edited regulations
[Strawman WOTUS 2.docx](#)
[ATT00001.htm](#)
[Revised WOTUS and permitting regulations.docx](#)
[ATT00002.htm](#)

To: Sarah Greenwalt (greenwalt.sarah@epa.gov)[greenwalt.sarah@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Bodine, Susan
Sent: Fri 10/13/2017 1:18:10 PM
Subject: FW: revised
WOTUS slides 2.pptx
Case studies.docx

Revised slide deck. I will bring copies

From: Bodine, Susan
Sent: Friday, October 13, 2017 9:16 AM
To: Bailey, Ethel <Bailey.Ethel@epa.gov>
Subject: revised
Importance: High

Please print one slide per page, one sided

5 copies.

To: Bowman, Liz[Bowman.Liz@epa.gov]
Cc: Wilcox, Jahan[wilcox.jahan@epa.gov]; Ferguson, Lincoln[ferguson.lincoln@epa.gov]; Abboud, Michael[abboud.michael@epa.gov]; Traylor, Patrick[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Tue 11/14/2017 8:04:25 PM
Subject: Re: RE:

Ex. 5 - Deliberative Process

Sent from my iPhone

On Nov 14, 2017, at 1:50 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Ex. 5 - Deliberative Process ?

From: Wilcox, Jahan
Sent: Tuesday, November 14, 2017 1:48 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Subject:

Liz mentioned that we might unveil something on Monday. Any good shiny objects for tomorrow as below are the bullets that I will be sharing with James Hohmann from the Washington Post who will be doing this interview.

https://www.washingtonpost.com/people/james-hohmann/?utm_term=.82b46982de46

EPA Forces ExxonMobil To Pay \$2.5 Civil Penalty & \$300 Million On Pollution-Control Technology Plants ...

Under Agreement with the Justice Department and Environmental Protection Agency, ExxonMobil to Reduce Harmful Air Pollution at Eight U.S. Chemical Plants. “The Department of Justice, the U.S. Environmental Protection Agency (EPA), and the Louisiana Department of Environmental Quality (LDEQ) announced a settlement today with Exxon Mobil Corp. and ExxonMobil Oil Corp., (ExxonMobil) that will eliminate thousands of tons of harmful air pollution from eight of Exxon’s petrochemical manufacturing facilities in Texas and Louisiana. The settlement resolves allegations that ExxonMobil violated the Clean Air Act by failing to properly operate and monitor industrial flares at their

petrochemical facilities, which resulted in excess emissions of harmful air pollution. ExxonMobil will spend approximately \$300 million to install and operate air pollution control and monitoring technology to reduce harmful air pollution from 26 industrial flares at five ExxonMobil facilities in Texas—located near Baytown, Beaumont, and Mont Belvieu—and three of the company’s facilities in Baton Rouge, Louisiana. Once fully implemented, the pollution controls required by the settlement are estimated to reduce harmful air emissions of volatile organic compounds (VOCs) by more than 7,000 tons per year. The settlement is also expected to reduce toxic air pollutants, including benzene, by more than 1,500 tons per year. The Louisiana Department of Environmental Quality is also a signatory of today’s settlement, which resolves alleged violations of Louisiana law at ExxonMobil’s three plants in Baton Rouge, Louisiana. ‘This settlement means cleaner air for communities across Texas and Louisiana, and reinforces EPA’s commitment to enforce the law and hold those who violate it accountable,’ said EPA Administrator Scott Pruitt. ‘As this agreement shows, EPA is dedicated to partnering with states to address critical environmental issues and improving compliance in the regulated community to prevent future violations of the law.’” ([EPA Press Release](#), 10/31/17)

Exxon settles pollution case with US, will upgrade 8 plants. “Exxon Mobil settled violations of the clean-air law with the Trump administration by agreeing to pay a \$2.5 million civil penalty and spend \$300 million on pollution-control technology at plants along the Gulf Coast. Federal officials said Tuesday that the settlement will prevent thousands of tons of future pollution, including cancer-causing benzene, from eight petrochemical plants in Texas and Louisiana. Some environmentalists criticized the settlement as insufficient punishment for years of violations by the giant oil company, while others said it addressed excess burning or flaring of gas, a major pollution problem at refineries and chemical plants. The deal with the U.S. and Louisiana settles allegations that Exxon violated the federal Clean Air Act by releasing excess harmful pollution after modifying flaring systems at five plants in Texas and three in Louisiana. The allegations date back more than a decade. Exxon said it will install and increase efficiency of the flaring systems and monitor for benzene outside four of the plants. U.S. officials said the deal will cut emissions of toxic pollutants including benzene by 1,500 tons a year and reduce release of other chemicals by thousands of tons.” ([The Washington Post](#), 10/31/17)

EPA Holds PDC Energy Accountable ...

DOJ, EPA and State of Colorado Reach Agreement With PDC Energy, Inc. to Resolve Litigation and Reduce Air Pollution. “The Department of Justice, the U.S. Environmental Protection Agency (EPA), and the State of Colorado today announced a settlement with Denver-based PDC Energy, Inc. resolving Clean Air Act violations alleged in a civil complaint. The complaint filed June 26, 2017 alleged that PDC violated requirements to reduce volatile organic compound (VOC) emissions from its oil and gas exploration and production activities in the Denver area. This case arose from a series of Colorado inspections that found significant VOC emissions from PDC’s condensate storage tanks. Under the settlement, PDC will spend an estimated \$18 million on system upgrades,

improved operations and maintenance practices, monitoring, and inspections to reduce emissions. PDC will also be required to implement environmental mitigation projects at certain sites to further reduce VOC and nitrogen oxide (NOx) emissions at a cost of \$1.7 million. The settlement includes a \$2.5 million civil penalty, which will be split evenly between the United States and the State of Colorado. The state's share of the penalty may be offset by up to \$1 million by performing one or more state-only supplemental environmental projects. EPA estimates that modifications to the vapor control systems, along with operational and maintenance improvements and increased monitoring, will reduce VOC emissions by more than 1,600 tons per year. PDC already has begun this work, which must be completed on a phased schedule with a deadline of June 30, 2019 for the last phase. 'This agreement will result in cleaner air in the Denver area and shows that EPA is committed to enforcing the law in order to ensure public health is protected,' said EPA Administrator Scott Pruitt. 'This case exemplifies the strong partnerships with states that are integral to delivering results for American communities and finding solutions that build compliance with the law and prevent future violations.'" ([EPA Press Release](#), 10/31/17)

EPA, Colorado reach \$21 million-plus settlement with Denver-based oil and gas company for smog-causing pollution. "A Denver-based oil and gas company has reached a \$21 million-plus settlement with the Environmental Protection Agency and state regulators for leaking smog-causing pollutants into the air from its operations sites around the city dating back roughly four years. As part of the agreement, PDC Energy Inc. — one of the largest oil and gas drillers along the Front Range — has agreed to pay a \$2.5 million civil penalty that will be split between the federal government and Colorado. It will also spend \$18 million on system upgrades and improved maintenance practices, monitoring and inspections to reduce emissions, as well as \$1.7 million to implement environmental mitigation projects. 'This agreement will result in cleaner air in the Denver area,' EPA Administrator Scott Pruitt said in a written statement." ([The Denver Post](#), 10/31/17)

PDC Energy settles federal, state lawsuit over oil and gas pollution in Colorado. "PDC Energy Inc. has agreed to a \$22.2 million settlement to end a lawsuit filed in June by the U.S. Environmental Protection Agency, the U.S. Department of Justice and state air pollution officials, pledging to improve emission control systems on storage tanks in Colorado's Denver-Julesburg Basin. The settlement, announced Tuesday, comes about three months after the suit was filed accusing the Denver oil and gas company (Nasdaq: PDCE) of violating state and federal pollution standards by emitting volatile organic compounds from its storage tanks. The suit alleged the company violated the federal Clean Air Act and the Colorado Air Pollution Prevention and Control Act, the state's federally approved 'State Implementation Plan' designed to reduce pollution in Colorado, and the state's air quality regulations. VOCs are chemicals which can 'cook' on hot, sunny days to form ozone. Ozone is a pollutant that irritates the lungs, exacerbates diseases such as asthma, and can increase susceptibility to respiratory illnesses, such as pneumonia and bronchitis. EPA Administrator Scott Pruitt, in a statement, said the settlement 'will result in cleaner air in the Denver area and shows that EPA is committed to enforcing the law in order to ensure public health is protected.' 'This case exemplifies the strong partnerships with states that are integral to delivering results for American communities and finding solutions that build compliance with the law and prevent future violations,' Pruitt said."

(Denver Business Journal, 10/31/17)

In October 2017, Scott Pruitt wants to end regulation through litigation.

“Environmental Protection Agency Administrator Scott Pruitt issued a directive on Monday to limit the extent to which the EPA can reach legal agreements with groups suing to force it to take regulatory action. Ending the practice known as ‘sue and settle’ has long been a top priority for conservatives and business groups. In recent years, especially under the Obama administration, the EPA and other agencies resolved litigation over delays in issuing rules by agreeing to specific timelines to act and reimbursing plaintiffs’ attorney fees. In a news briefing, Pruitt said he was taking action to ensure that consent decrees ‘are not used in an abusive fashion to subvert due process’ and to exclude the public from weighing in. ‘It’s very important that we do not get engaged in regulation through litigation,’ he said. ‘This is something that is a long time coming with respect to this agency.’” (The Washington Post, 10/16/17)

Jahan Wilcox

EPA

Strategic Communications Advisor

Work Cell: 202.309.0934

Work Email: wilcox.jahan@epa.gov

To: Hayley Ford (ford.hayley@epa.gov)[ford.hayley@epa.gov]
Cc: Falvo, Nicholas[falvo.nicholas@epa.gov]
From: Bodine, Susan
Sent: Tue 9/19/2017 9:22:36 PM
Subject: FW: San Jacinto ROD meeting on Friday

Hayley, can you add Cyndy Mackey to the Friday San Jacinto ROD invite?

From: Kelly, Albert
Sent: Tuesday, September 19, 2017 5:20 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Falvo, Nicholas <falvo.nicholas@epa.gov>
Subject: Re: San Jacinto ROD meeting on Friday

Certainly. Your decision

Sent from my iPad

On Sep 19, 2017, at 3:16 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Can I also bring Cyndy Mackey with me? She is the Director of the Superfund Enforcement Office. You have worked with her on some matters.

Susan

To: Lyons, Troy[lyons.troy@epa.gov]; Traylor, Patrick[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Tue 11/21/2017 11:05:19 PM
Subject: RE: DRAFT Email to Gov's COS

OK here

From: Lyons, Troy
Sent: Tuesday, November 21, 2017 5:58 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: DRAFT Email to Gov's COS

Wanted to run by you all to keep me honest

Tony—

Ex. 5 - Deliberative Process

Many thanks,

Troy

Troy M. Lyons

Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

Ex. 6 - Personal Privacy (cell)

To: Bailey, Ethel[Bailey.Ethel@epa.gov]
From: Bodine, Susan
Sent: Wed 10/11/2017 3:27:46 PM
Subject: Alm room capacity

Can you find out? I am worried about numbers for the Oct 24 meeting

To: Traylor, Patrick[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Tue 11/21/2017 10:54:54 PM
Subject: RE: On the phone with Region 8 in my office
Memo to **Ex. 5 - Deliberative Process**.docx

I know.

Can you look at this revised memo? And share the commitments with Doug or conference me in.

From: Traylor, Patrick
Sent: Tuesday, November 21, 2017 5:48 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: On the phone with Region 8 in my office

Patrick Traylor

Deputy Assistant Administrator

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

(202) 564-5238 (office)

Ex. 6 - Personal Privacy cell)

To: Ferguson, Lincoln[ferguson.lincoln@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Patrick Traylor
(traylor.patrick@epa.gov)[traylor.patrick@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Lyons,
Troy[lyons.troy@epa.gov]; Samantha Dravis (dravis.samantha@epa.gov)[dravis.samantha@epa.gov]
From: Bodine, Susan
Sent: Tue 11/28/2017 2:48:20 PM
Subject: Memo for Ex. 5 - Deliberative Process
Memo to Ex. 5 - Deliberative Process.docx

To: Kelly, Albert[kelly.albert@epa.gov]
From: Bodine, Susan
Sent: Thur 10/5/2017 2:53:24 PM
Subject: Re: portland

Yes
At about noon

Sent from my iPhone

On Oct 5, 2017, at 10:12 AM, Kelly, Albert <kelly.albert@epa.gov> wrote:

Would you have any time today to visit by phone on the above?

Albert Kelly

Senior Advisor to the Administrator

1200 Pennsylvania Avenue, NW

Washington, DC 20460

202 306 8830

To: Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Mon 11/6/2017 3:45:09 PM
Subject: OECA Weekly Briefing (November 7 2017).docx
[OECA Weekly Briefing \(November 7 2017\).docx](#)

My suggested items. Comments?

To: Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Mon 10/30/2017 6:58:46 PM
Subject: OECA Weekly Briefing (October 31 2017).docx
OECA Weekly Briefing (October 31 2017).docx

To: Ford, Hayley[ford.hayley@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Forsgren, Lee[Forsgren.Lee@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Wehrum, Bill[Wehrum.Bill@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Bodine, Susan
Sent: Fri 11/17/2017 7:14:41 PM
Subject: RE: Pruitt Back Early

ok

From: Ford, Hayley
Sent: Friday, November 17, 2017 2:13 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: Pruitt Back Early

Sarah/Lee/Susan he's ready for Ex. 5 - Deliberative Process you want to head over. For the air crew, why don't you plan to come at 3 and do both ~~back-to-back~~ if that's ok.

Hayley Ford

Deputy White House Liaison and Personal Aide to the Administrator

Environmental Protection Agency

ford.hayley@epa.gov

Phone: 202-564-2022

Cell Ex. 6 - Personal Privacy

From: Greenwalt, Sarah
Sent: Friday, November 17, 2017 2:10 PM
To: Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Ford, Hayley <ford.hayley@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>;

Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: Pruitt Back Early

Hayley, I think we are ready if you'd like to do Ex. 6 - Deliberative Process now.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell Ex. 6 - Personal Privacy

Greenwalt.Sarah@epa.gov

From: Forsgren, Lee

Sent: Friday, November 17, 2017 2:09 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>;
Ford, Hayley <ford.hayley@epa.gov>

Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>;
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>;
Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Subject: RE: Pruitt Back Early

I can move it up if that is best for you and Sarah.

From: Bodine, Susan

Sent: Friday, November 17, 2017 2:08 PM

To: Dravis, Samantha <dravis.samantha@epa.gov>; Ford, Hayley <ford.hayley@epa.gov>

Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>;
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>;
Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

Subject: RE: Pruitt Back Early

You can move the Ex. 5 - Deliberative Process meeting up if you want to.

From: Dravis, Samantha

Sent: Friday, November 17, 2017 1:58 PM

To: Ford, Hayley <ford.hayley@epa.gov>

Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>

Subject: Re: Pruitt Back Early

I'm free and hoping to leave early today so earlier is great

Sent from my iPhone

On Nov 17, 2017, at 1:56 PM, Ford, Hayley <ford.hayley@epa.gov> wrote:

Pruitt is back earlier as we moved lunch earlier. He may want to move up some of his briefings. Below is the current schedule. Anyone free earlier than 3? Thanks!

3:00PM ET – 3:30PM **Briefing: Update on**

Ex. 5 - Deliberative Process

ET

Location: Administrator's Office

Staff: Bill Wehrum, Samantha Dravis, Justin Schwab, Mandy Gunasekara, Ryan Jackson

3:30PM ET – 4:00PM **Briefing:**

Ex. 5 - Deliberative Process

ET

Location: Administrator's Office

Staff: Sarah Greenwalt, Lee Forsgren, Susan Bodine

4:00PM ET – 4:30PM **Briefing:**

Ex. 5 - Deliberative Process

ET

Location: Administrator's Office

Staff: Bill Wehrum, Ryan Jackson, Samantha Dravis, Mandy Gunasekara

Hayley Ford

Deputy White House Liaison and Personal Aide to the Administrator

Environmental Protection Agency

ford.hayley@epa.gov

Phone: 202-564-2022

Cell: Ex. 6 - Personal Privacy

To: Bailey, Ethel[Bailey.Ethel@epa.gov]
Cc: Shiffman, Cari[Shiffman.Cari@epa.gov]; Miles, Erin[Miles.Erin@epa.gov]
From: Bodine, Susan
Sent: Mon 10/23/2017 7:27:49 PM
Subject: agenda
Agenda - October 24th Enforcement and Compliance Fourm.pdf

Can you make copies of NAHB's agenda for tomorrow's meeting?



**Construction Stormwater Enforcement & Compliance:
Working with Regulated Stakeholders to Achieve Results**

**U.S. Environmental Protection Agency, Washington D.C.
Tuesday, October 24, 2017
10:00 a.m. – 12:00 p.m.**

Attendees:

EPA Office of Enforcement and Compliance Assurance (OECA) and Office of Water (OW) senior staff, Regional OECA officials, program staff

National Association of Home Builders (NAHB) members from each EPA region, NAHB staff

Objective:

NAHB members will identify top enforcement issues that generate uncertainty, redundancy, and increased costs in the field.

Participants will discuss opportunities to improve compliance and clarify state/federal enforcement roles so that all stakeholders understand responsibilities and are better equipped to meet compliance goals.

AGENDA

- I. Welcome** – Susan Bodine, EPA; Greg Ugalde, NAHB Second Vice Chairman of the Board
- II. Introductions**
- III. Key Enforcement Issues** – NAHB Members
 - ☐ Overly burdensome requirements for small sites
 - ☐ Limited opportunity to correct minor violations in the field
 - ☐ Overlap of state and federal authority
 - ☐ Confusion over enforceability of SWPPP details
- IV. Potential Solutions**
- V. Next Steps**

To: Ferguson, Lincoln[ferguson.lincoln@epa.gov]
Cc: Traylor, Patrick[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Tue 10/24/2017 6:59:05 PM
Subject: Re: Briefings

Yes

I think Patrick has the close to final version

We know you need by 4

Sent from my iPhone

On Oct 24, 2017, at 2:57 PM, Ferguson, Lincoln <ferguson.lincoln@epa.gov> wrote:

Will you have anything for the Admin's binder for tomorrow re: Enforcement briefing?

Thanks,
Lincoln

Lincoln Ferguson

Senior Advisor to the Administrator

U.S. EPA

(202) 564-1935

To: Bowman, Liz[Bowman.Liz@epa.gov]
Cc: Traylor, Patrick[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Wed 11/15/2017 2:12:26 PM
Subject: RE: Request for input for pending NYT story

I spoke to him this morning. Go ahead and give Eric his cell.

From: Bowman, Liz
Sent: Tuesday, November 14, 2017 8:54 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Re: Request for input for pending NYT story

Thank you

Sent from my iPhone

On Nov 14, 2017, at 8:51 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Ok

I will let him know tomorrow

Sent from my iPhone

On Nov 14, 2017, at 8:43 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Ex. 5 - Deliberative Process

Sent from my iPhone

On Nov 14, 2017, at 8:34 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Sent from my iPhone

Begin forwarded message:

From: Doug Parker <doug.parker@earthandwatergroup.com>
Date: November 14, 2017 at 7:11:58 PM EST
To: "Bodine, Susan" <bodine.susan@epa.gov>
Cc: "Traylor, Patrick" <traylor.patrick@epa.gov>
Subject: Re: Request for input for pending NYT story

Hello Susan (and Patrick) -

I'd be happy to share my perspective on that era in terms of criminal enforcement numbers. It is likely that the reporter would ask about current numbers, so I'd also likely share my thoughts/hope that numbers increase in this administration.

If you'd like to pass on my cell to the NYT that is fine. Feel free to call as well if you'd prefer to chat further.

Best,

Doug

Doug Parker| **Earth& Water Group**
1455 Pennsylvania Ave., NW, Suite 400, Washington, DC 20004

(202) 280-6362 (o) | Ex. 6 - Personal Privacy (c) |
www.earthandwatergroup.com

<Outlook-1482168080.png>

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From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Tuesday, November 14, 2017 6:48 PM
To: Doug Parker
Cc: Traylor, Patrick
Subject: FW: Request for input for pending NYT story

Doug,

The NYT is doing a piece on EPA enforcement. We are going to provide them with the stats on the drastic reduction of CID agents from 2010 to 2016 (from 206 to 156).

Would you be willing to provide a quote about the lack of support for criminal enforcement in the last administration? Something along the lines of your exit memo to Cynthia?

In March 2016 you said: "There a wider lack of support for the foundational elements of the criminal enforcement program. ... I make this statement at a time when we are at the fewest number of criminal investigators in roughly two decades, the operational support within OECA (i.e. HR, IT, etc.) has deteriorated dramatically, and the perception of many of your law enforcement officers is that their work and profession is not fully valued by the political leadership of today's EPA."

From: Lipton, Eric [<mailto:lipton@nytimes.com>]
Sent: Monday, November 13, 2017 1:50 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Ivory, Danielle <danielle.ivory@nytimes.com>
Subject: Request for input for pending NYT story

Hello Liz

Hope you had nice weekend.

I am working with another NYT reporter named Danielle Ivory on a piece that looks at EPA enforcement efforts and how they are changing under the new administration. We very much hope that the EPA will engage with us on this story as we do want your substantive input for this piece.

As part of the story, I would like to arrange an on-the-record interview this week with someone to discuss agency enforcement and how it is proceeding, what types of priorities the new administration might have for enforcement and what trends it is seeing emerge. I also want to get more insight into what the agency means when it discusses "cooperative federalism," in terms of how that will play out with respect to actual implementation of enforcement efforts.

In addition to these broader questions about how the EPA defines its enforcement priorities in the new administration and its focus on cooperative federalism, the story will include a number of additional elements

1) We have assembled our own database from ECHO that examines civil penalties and injunctive relief through administrative and judicial actions in the first nearly nine months of the new leadership at EPA and we have compared this data to similar period of two prior administrations. The data pull is structured so that we look at cases started/allowed to be filed since Feb. 17th through November 9th. We also did this same analysis for Feb. 17 through August 16, which is a six month period. During these two periods, we have pulled data on

++ All civil complaints – administrative or judicial, whether settled or still pending

++ Consent decrees lodged (complaint filed at the same time) whether entered or not

We want like to have a conversation with your enforcement team leader to discuss this data and what you think it says about how enforcement has changed in the new administration.

2) As part of our reporting, we also have been looking at a collection of Notices of Violation, which are often the first step before enforcement action. The nonprofit group, Environmental Integrity Project did a FOIA for NOVs dating back to Jan. 1 2014. We have access to that FOIA response and have been looking at certain individual cases, with a particular focus on cases that have not had any apparent follow up action, based on ECHO or judicial records. Our goal would be to understand where else we should be looking to see evidence of follow up on these matters--perhaps we are missing it--or to understand why there has perhaps not been a resolution yet on these matters. We realize that there are different reasons why there might not be follow up in any particular case, in terms of enforcement.

Happy to discuss this further on the phone. I realize I have not shared the actual data we have pulled or the specific NOVs we are looking at, among the hundreds provided in response to the FOIA.

The goal of this email is to get the conversation started, as we need you input for the story this week. As again, I do hope that we can have a productive conversation for this story.

I can be reached at 202 862 0448

Eric

Eric Lipton



Washington Bureau

202 862 0448 office

Ex. 6 - Personal Privacy mobile

lipton@nytimes.com

To: Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Traylor, Patrick[traylor.patrick@epa.gov]
Cc: Mackey, Cyndy[Mackey.Cyndy@epa.gov]; DeLeon, Rafael[Deleon.Rafael@epa.gov]; Previ, Caroline[Previ.Caroline@epa.gov]; Miles, Erin[Miles.Erin@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]
From: Bodine, Susan
Sent: Fri 9/22/2017 7:52:39 PM
Subject: RE: HEC TA Q's on Brownfields
H.R. 1758 - HEC Request for TA - OECA draft 9-22-17.docx

My edits.

From: Emmerson, Caroline
Sent: Friday, September 22, 2017 2:17 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Mackey, Cyndy <Mackey.Cyndy@epa.gov>; DeLeon, Rafael <Deleon.Rafael@epa.gov>; Previ, Caroline <Previ.Caroline@epa.gov>; Miles, Erin <Miles.Erin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: FW: HEC TA Q's on Brownfields

Susan, Larry and Patrick,

Attached, for your review, is OSRE's proposed response to HEC's questions on H.R. 1758 (Amendment in the Nature of a Substitute) and below is the incoming request from OCIR (Raquel Snyder) that includes the bill language. Also attached is CERCLA 101(20)(D) as amended by this language. Our response is due to OCIR on Monday (9/25) and OLEM (Jackie Harwood) is waiting to respond to what we propose.

Please let me know if you have any questions or comments.

Thanks,

Caroline

564-1716

From: Snyder, Raquel
Sent: Wednesday, September 20, 2017 4:58 PM
To: Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Harwood, Jackie <Harwood.Jackie@epa.gov>
Subject: HEC TA Q's on Brownfields

Good afternoon,

HEC is asking us to address the following questions related to paragraph (2) below:

Ex. 5 - Deliberative Process

Please provide a response to Q1 A and Q2 by COB tomorrow.

Ex. 5 - Deliberative Process

OECA, can you run this Q by Susan B? If this question is something we can't answer in time (Monday at the latest), just let me know.

Please let me know if you have questions.

Many thanks,

Raquel Snyder

Congressional Liaison

U.S. EPA/Office of Congressional Affairs

(202) 564-9586

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1758**

OFFERED BY ~~MR. H. CLAYTON GARDNER~~
MR. KATKO OF NEW YORK

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Brownfields Reauthor-
3 ization Act of 2017".

**4 SEC. 2. REDEVELOPMENT CERTAINTY FOR GOVERN-
5 MENTAL ENTITIES.**

6 Section 101(20)(D) of the Comprehensive Environ-
7 mental Response, Compensation, and Liability Act of
8 1980 (42 U.S.C. 9601(20)(D)) is amended—

9 (1) by striking "ownership or control" and all
10 that follows through "by virtue" and inserting "own-
11 ership or control through seizure or otherwise in
12 connection with law enforcement activity, or through
13 bankruptcy, tax delinquency, abandonment, or other
14 circumstances in which the government acquires title
15 by virtue"; and

16 (2) by inserting "or fails to exercise appropriate
17 care (as described in paragraph (40)(D)) following

To: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Brown, Byron[brown.byron@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]
From: Bodine, Susan
Sent: Tue 11/7/2017 3:15:03 PM
Subject: RE:

Byron already has a meeting scheduled for noon on this topic. You are welcome to join. He will send in invite.

-----Original Message-----

From: Dravis, Samantha
Sent: Tuesday, November 7, 2017 9:45 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject:

Can we circle back on 108b this morning, and discuss possible steps to help this along?

Sent from my iPad

To: Bowman, Liz[Bowman.Liz@epa.gov]; Senn, John[Senn.John@epa.gov]
Cc: Traylor, Patrick[traylor.patrick@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Wilcox, Jahan[wilcox.jahan@epa.gov]
From: Bodine, Susan
Sent: Thur 11/16/2017 5:16:26 PM
Subject: RE: InsideEPA Response
[fy18-19-oeca-npm-guidance.pdf](#)

In addition, you can

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

From: Bowman, Liz
Sent: Thursday, November 16, 2017 12:10 PM
To: Senn, John <Senn.John@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: InsideEPA Response

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Liz Bowman

U.S. Environmental Protection Agency (EPA)

Office: 202-564-3293

NATIONAL PROGRAM MANAGER (NPM) GUIDANCE

FISCAL YEARS 2018-2019

Office of Enforcement and Compliance Assurance

September 29, 2017

Publication Number: 300R17002

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I. INTRODUCTION

For almost fifty years, the protections mandated by our federal environmental laws have been essential to the growth of American prosperity. Non-compliance with those laws diminishes our shared prosperity and unfairly tilts the field of economic competition in favor of those that skirt the law. EPA's Office of Enforcement and Compliance Assurance (OECA)—in cooperation with its tribal, state, and local partners—is present to ensure consistent and fair enforcement of federal environmental laws and regulations.

OECA discharges this responsibility using a full set of compliance assurance tools, including compliance monitoring and assistance, informal enforcement actions (e.g., “find and fix”), preferential treatment of entities that self-disclose non-compliance, and better-designed rules that are clearer and easier to implement, all the way to traditional civil and criminal enforcement actions. And OECA will continue to work with its tribal, state, and local partners in this important work, particularly in using diverse and innovative approaches to advance compliance.¹

As has long been the case, the overwhelming majority of EPA's enforcement actions are taken in programs that are not delegable to the states or in states that have not sought authorization to implement a delegable program. In authorized states, EPA and states share enforcement responsibility with primary enforcement responsibility residing with the states,² which often join with EPA in bringing cases. EPA generally takes the enforcement lead in authorized states only: 1) at the request of the state; 2) when the state is not well positioned to bring an action (e.g., federal and state facilities or in actions involving facilities in multiple states); 3) when the state “do[es] not provide the resources necessary to meet national regulatory minimum standards or ha[s] a documented history of failure to make progress toward meeting national standards;”³ or 4) when EPA has a unique role, including emergency situations and national enforcement priority areas, and actions addressing violations across multiple state jurisdictions.

EPA's compliance assurance and enforcement programs continue to work with tribes on a government-to-government basis to protect human health and the environment. The Agency's work in Indian country involves both oversight of tribes implementing federal programs and direct implementation of federal programs, including compliance and enforcement, where tribes have not received or are not able to receive program approval. EPA compliance assurance and enforcement work in Indian country is undertaken consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the OECA Guidance on the Enforcement Principles of the 1984 Indian Policy, and applicable EPA non-tribal specific policies and guidance.

¹ For example, see April 2017 Resolution 17-2: On the Value of Diverse and Innovative Approaches to Advance Compliance with Environmental Requirements | The Environmental Council of States.

² See e.g., ECOS Resolution 98-9, U.S. EPA Enforcement in Delegated States (revised September 28, 2016), describing the EPA and state roles in enforcement in authorized states: “WHEREAS, U.S. EPA and the States have bilaterally developed policy agreements which reflect those roles and which recognize the primary responsibility for enforcement action resides with the States, with U.S. EPA taking enforcement action principally where the State requests assistance, is unwilling or unable to take timely and appropriate enforcement actions, or in actions of national interest, or in actions involving multiple state jurisdictions.”

³ <https://www.ecos.org/wp-content/uploads/2017/06/ECOSCooperative-Federalism-2.0-June-17-FINAL.pdf>

This FY 2018-2019 National Program Manager (NPM) Guidance for the Office of Enforcement and Compliance Assurance (OECA) is a preliminary planning document and reflects the most current information available regarding specific programmatic commitments and activities⁴. It identifies the national compliance and enforcement activities that the U.S. Environmental Protection Agency (EPA or the Agency) and state, local and tribal government agencies will perform in FY 2018-2019 consistent with the budget and the Administrator's priorities. This NPM Guidance describes how the EPA plans to work with tribes, states, and local government agencies to ensure compliance with environmental laws. The *EPA Overview* to the National Program Manager (NPM) Guidance communicates important agency-wide information and should be reviewed in conjunction with this (FY) 2018-2019 NPM Guidance as well as other applicable requirements. Read the overview at: <http://www2.epa.gov/planandbudget/national-program-manager-guidances>. OECA may update this draft NPM Guidance throughout the development process as more specific policy direction is provided by the new Agency leadership team, more information is available about our appropriations, as public comments are received during the external review process, and additional information is available through our ongoing planning discussions with our state, local, and tribal partners.

II. KEY PROGRAMMATIC ACTIVITIES

A. Strengthening EPA/State Collaboration and State Performance

EPA, states, tribes, and territories share responsibility for protecting human health and the environment. Most major federal environmental laws require the EPA to establish minimum, nationwide program standards, and then authorize states and tribes to implement these programs. Under the principle of cooperative federalism, EPA and the states have bilaterally developed policy agreements which reflect their respective roles, including the June 1984 "Policy Framework for State/EPA Enforcement Agreements" (revised 1986 and 1993).

On a national level, EPA is working closely with states and tribes (with individual states, and through associations representing state environmental officials) to develop new compliance tools and approaches to make our programs more effective and efficient in promoting compliance and remediating violations. Some of our ongoing collaborative efforts with ECOS include⁵: producing webinars to help us identify new compliance approaches that we could then pilot and evaluate; developing smart mobile tools to make our inspectors more efficient and effective; increasing availability of training; preparing for advances in pollution monitoring technology⁶; expanding electronic reporting in the NPDES program to reduce burdens and improve outcomes. In FY

⁴ For FY 2019, EPA will develop FY 2019 Addenda to the FY 2018-2019 NPM Guidance that will reflect the future FY 2019 Congressional Justification (CJ) and EPA's FY 2018-2022 Strategic Plan (due to Congress in February 2018). This NPM Guidance applies to OECA, all EPA regional enforcement programs, and states, tribes, and local agencies authorized or delegated to implement EPA inspection and enforcement programs.

⁵ For more information on OECA's collaboration with ECOS via E-Enterprise, see [Article: Advanced Monitoring Technology: Opportunities and Challenges. A Path Forward for EPA, States, and Tribes.](#)

⁶ For more information on a broader range of collaborations between OECA and ECOS, see [Compendia of Next Generation Compliance Examples in Water, Air, Waste, and Cleanup Programs.](#)

2017, EPA and ECOS are launching a workgroup of senior state and EPA officials expressly to strengthen the state-EPA compliance assurance partnership.

EPA and states with authorized programs collaborate to share information, develop implementation tools, and innovate new approaches. Regions and authorized states work together to ensure minimum program standards are met, and to support program improvements where necessary, through a range of tools, including joint planning, work-sharing, and training.

EPA and states have developed the State Review Framework (SRF) to periodically evaluate each authorized state compliance and enforcement program “to provide a fair and consistent level of core enforcement across the country” (ECOS Resolution 98-9). The SRF provides a nationally consistent tool to periodically evaluate authorized state CAA, CWA and RCRA enforcement and compliance performance. This nationally consistent approach assures that: (1) states are evaluated consistently; (2) a level playing field exists for regulated businesses; (3) the public has similar protection from impacts of illegal pollution; and (4) timely compliance with national laws is widely achieved (where regions directly implement the federal program, OECA reviews regional programs using the same process and procedures as for all SRF reviews).

Throughout the history of the SRF, EPA has continuously worked with states to identify and implement updates and improvements to the SRF program. During FY 2017, EPA and states worked together to update the metrics that will be used in the fourth round of SRF reviews, which begin in FY 2018.

Activities: EPA regions, coordinating with their states and tribes where appropriate:

- Continue to support these national EPA-state collaborations by facilitating communication with their states, providing feedback and comments, or participating in pilot with states.
- Conduct all Round 4 SRF reviews of state CAA, CWA, and RCRA enforcement programs scheduled for 2018 and 2019 following SRF Round 4 guidance to be issued at end of FY 2017 (available on the ECHO SRF page), and enter completed draft and final SRF reports into the SRF Tracker.
- Focus oversight resources on state programs that are unable to meet minimum national performance standards. In addressing state core program performance issues, regions should respond according to the approaches articulated in the 1986 Revised Policy Framework for State/EPA Enforcement Agreements, as updated, and the National Strategy for Improving Oversight of State Enforcement Performance.

Activities: states, tribes and local government agencies:

- Work cooperatively with the EPA regions to conduct SRF reviews as scheduled and implement recommendations within the agreed upon time frames included in the final SRF reports provided to the state or local agency.

Measures (see Appendix A): For SRF see ACS measure SRF01.

B. Addressing the Most Serious Non-Compliance Concerns in Communities

The EPA's Compliance Monitoring program provides the critical infrastructure to detect noncompliance with federal regulatory laws and to promote compliance with the nation's environmental laws and protect human health and the environment. Compliance monitoring employs a variety of compliance assurance tools and activities that co-regulators and the EPA use to identify whether regulated entities are in compliance with applicable laws, regulations, and permit conditions. These compliance assurance tools include compliance monitoring and assistance, informal enforcement actions (e.g., "find and fix"), preferential treatment of entities that self-disclose non-compliance, and better-designed rules that are clearer and easier to implement, all the way to traditional civil and criminal enforcement actions. In addition, compliance monitoring activities such as inspections and investigations are conducted to determine whether conditions exist that may present imminent and substantial endangerment to human health and the environment.

In FY 2018-2019, in partnership with states and tribes, the EPA's compliance monitoring activities such as field inspections, electronic reporting, and data analysis tools, will be prioritized and focus on addressing the most serious noncompliance concerns in communities. EPA will also provide compliance monitoring and capacity building in authorized programs to support and complement authorized state, tribal, and local government programs. The Agency will prioritize work with co-regulators to develop methods that successfully leverage advances in both monitoring and information technology.

In FY 2018-2019, the EPA's compliance monitoring activities will continue to be both environmental media-based and sector-based. The EPA's media-based inspections complement those performed by co-regulators, and are a key part of the joint EPA-state strategy for meeting the long-term and annual inspection goals established for the air, water, pesticides, toxic substances and hazardous waste programs. These inspections ensure compliance with important programs under major environmental statutes such as the Clean Water Act (CWA), Clean Air Act (CAA), Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Emergency planning and Community Right-To Know Act (EPCRA). Sector-based inspections may include, but are not limited to, those conducted at federal facilities and inspections targeted to address facilities with potential environmental justice concerns.

Activities: EPA regions, states and tribes where appropriate:

- Adhere to the Compliance Monitoring Strategy (CMS) or approved Alternative Compliance Monitoring Strategy (ACMS) as appropriate, for the CWA, RCRA, CAA, FIFRA and TSCA programs, including for inspections in the federal facilities sector, as resources allow. The CMSs/ACMSs provide compliance monitoring goals for these programs and include flexibility to ensure that the most important pollution problems within each media program are addressed and accommodate for expanding universes of regulated entities and resource limitations.

- Ensure that any state and tribal inspectors who inspect on behalf of EPA are trained and credentialed consistent with [Agency guidance](#). States that are authorized by EPA to implement a program have their own training guidelines.
- Ensure timely and accurate entry of federal inspection and enforcement data into the appropriate national database (e.g., ICIS, RCRAInfo, etc.).

For more information about these programs, please contact a subject matter expert listed in Appendix C.

Measures (see Appendix A): For Federal Facilities see ACS measure FED-FAC 05. For CAA see ACS measures CAA04 and CAA06. For RCRA see ACS measures RCRA01-03, RCRA01.s, and RCRA02.s. For TSCA see ACS measure TSCA01OC and TSCA02OC. For FIFRA see ACS measure FIFRA-FED1. For EPCRA see ACS measures EPCRA01-02. For CWA see ACS measure CWA07. For SDWA see ACS measure SWDA02.

C. Implementing the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

The EPA's CERCLA enforcement program ensures prompt site cleanup and uses an "enforcement first" approach that maximizes the participation of liable and viable parties in performing and paying for cleanups. The program protects communities by ensuring that potentially responsible parties (PRPs) conduct cleanups at National Priorities List (NPL) sites, preserving federal dollars for sites where there are no viable contributing parties. By addressing the risks posed by Superfund sites, the CERCLA enforcement program strengthens the economy and spurs economic growth by returning Superfund sites to productive use. Superfund construction projects can have a direct impact on enhancing our national infrastructure while addressing harmful exposure.

In FY 2018-2019, EPA will focus its resources on the highest priority sites, particularly those that may present an immediate risk to human health or the environment. In accordance with the [Superfund Task Force Report](#), the Agency will improve and revitalize the Superfund program to ensure that contaminated sites across the country are remediated to protect human health and the environment and returned to beneficial reuse as expeditiously as possible. At federally-owned sites, EPA will also focus on resolving formal disputes under the Federal Facility Agreements.

For further information regarding the Agency, state, local and community activities and measures recommended by the Office of Land and Emergency Management (OLEM), you may review the OLEM FY 2018-2019 National Program Manager Guidance.

Activities: EPA regions, coordinating with their states and tribes where appropriate:

- Leverage resources to maximize cleanup: specifically, maintain focused enforcement efforts to compel PRP participation earlier in the response process; hold parties accountable to timeframes and commitments; identify responsible parties earlier in the process.

- Focus Superfund enforcement on the highest-priority sites and those enforcement activities that achieve the biggest return on our investment based on environmental risk.
- Address liability concerns that can be a barrier to getting sites cleaned up and returned to productive use.
- Continue the strong partnerships with states and tribes on PRP searches, long-term stewardship, community engagement and revitalization.

D. Implementing National Enforcement Priorities

For more than 20 years, OECA has employed the National Enforcement Initiatives (NEIs) as a mechanism for strategically focusing EPA's enforcement and compliance resources to address widespread noncompliance associated with serious environmental or human health problems and where federal enforcement can make a significant difference. Each NEI includes goals, measures and tools for addressing these problems. These initiatives are reevaluated every three years in order to assure that federal enforcement and compliance resources efficiently address such widespread noncompliance problems.

The NEIs for the current cycle (FY 2017-FY 2019) were selected using input from states, tribes, and other external stakeholders. States provide input throughout the NEI selection process and EPA regional offices partner with their states and tribes to coordinate implementation. As part of an NEI, EPA may provide our co-regulators with focused technical and legal support, and training and capacity building in areas such as inspector training, advanced monitoring, data analysis and financial modeling. While enforcement cases are the most visible tool used to address the serious violations that are the focus of the NEIs, the NEIs also employ other tools, such as compliance assistance. Several of the current NEIs include an expanded emphasis on other compliance tools, such as working with states to develop easier-to-understand permit conditions, issuing compliance advisories, encouraging self- and third party audits, and working with trade associations. In FY18-19, a broader range of tools to promote compliance will be further incorporated into the NEIs.

The NEIs for FY 2017-FY 2019 are: Reducing Air Pollution from the Largest Sources; Cutting Hazardous Air Pollutants (HAPs); Reducing Air Emissions of Hazardous Wastes from RCRA Regulated Facilities; Ensuring Energy Extraction Activities Comply with Environmental Laws; Reducing Risks of Accidental Releases at Industrial and Chemical Facilities; Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters; Preventing Animal Waste from Contaminating Surface and Ground Water; and Keeping Industrial Pollutants Out of the Nation's Waters.

Activities: EPA regions, coordinating with their states and tribes where appropriate:

- Implement the strategies for the National Enforcement Initiatives, including in communities that may be disproportionately exposed to risks and harm from pollutants in their environment.

Measures (see Appendix A): For *Reducing Air Pollution from the Largest Sources*, see ACS measures PBS-NSR07 and NSR08. For *Cutting Hazardous Air Pollutants*, see ACS measures PBS-ATX03 and ATX04. For *Reducing Air Emissions of Hazardous Wastes from RCRA Regulated Facilities*, see ACS measure PBS-RCRAAIR01. For *Ensuring Energy Extraction Activities Comply with Environmental Laws*, see ACS measures PBS-EE01 and EE03. For *Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters*, see ACS measures PBS M105-M108. For *Preventing Animal Waste from Contaminating Surface and Ground Water*, see ACS measures PBS-CAF002, CAF007 and CAF008. For *Keeping Industrial Pollutants Out of the Nation's*, see ACS measures PBS-ID01 and 02.

For *Reducing Risks of Accidental Releases at Industrial and Chemical Facilities*, the Office of Land and Emergency Management (OLEM) oversees the ACS process for inspection activity under this program. Please refer to the ACS measure, CH2 (Number of risk management plan inspections completed), located in OLEM's NPM Guidance ACS Appendix.

E. Implementing NPDES E-Reporting

OECA, together with the EPA regions, the Office of Water, and authorized states, continues to implement work to improve compliance with Clean Water Act requirements. Improvements in the water compliance and enforcement program include switching from existing paper reporting to electronic reporting, resulting in increased efficiency and improved transparency of the NPDES program; create a new paradigm in which regulations and permits improve compliance via public accountability, self-monitoring, self-certification, electronic reporting and/or other innovative methods; and conducting comprehensive and coordinated permitting, compliance, and enforcement programs to improve state and EPA performance in protecting and improving water quality.

In FY 2018-2019, the EPA will continue to maintain ICIS access to the Agency, states, tribes and the public, and implement the NPDES Electronic Reporting Rule covering e-reporting permitting requirements for the EPA, states and tribes. The EPA will work with states and tribes to evaluate and prioritize the development of additional electronic reporting tools that support states. The EPA's electronic reporting tools save the states a significant amount of resources in development and operations and maintenance costs.

For further information regarding the Agency, state, local and community activities and measures recommended by the Office of Water, you may review the FY 2018-2019 National Water Program Manager Guidance.

Activities: EPA regions, coordinating with their states and tribes where appropriate:

- Implement the final [NPDES Electronic Reporting Rule](#) (40 CFR §127), ensure states are implementing the NPDES Electronic Reporting Rule by adopting the use of EPA e-reporting tools (NetDMR, NeT) or developing their own state e-reporting tools, and review state and regional general permit paper forms to evaluate consistency with Appendix A in the final rule.

- Coordinate closely with the Office of Compliance to individually evaluate their states' implementation of the NPDES Electronic Reporting Rule, including: resolving any outstanding issues with the implementation of EPA's Cross-Media Electronic Reporting Regulation (CROMERR – 40 CFR part 3), complying with data sharing requirements (40 CFR 127.23), and evaluating the electronic reporting participation rate (e.g., 90-percent of DMR filers should be electronically submitting their DMRs).

APPENDICES

Appendix A: FY 2018-2019 NPM GUIDANCE MEASURES

This appendix includes a list of measures and revisions (underlined) to be continued from the FY 2016-2017 NPM Guidance, new measures to be implemented in FY 2018, revisions from the and a list of measures from the FY 2017 NPM Guidance Addendum to be discontinued in FY 2018.

Note: For the new *Reducing Risks of Accidental Releases at Industrial and Chemical Facilities* National Enforcement Initiative, the Office of Land and Emergency Management (OLEM) oversees the ACS process for inspection activity under this program. Please refer to the ACS measure, CH2 (Number of risk management plan inspections completed), located in OLEM's NPM Guidance ACS Appendix.

Measures Continued in FY 2018-2019

ACS Code	Measure Text
PBS-ATX03	NEI: <u>Cutting Hazardous Air Pollutants</u> Number of facilities, as described in the Air Toxics NEI strategy, evaluated for compliance.
PBS-ATX04	NEI: <u>Cutting Hazardous Air Pollutants</u> Number of addressing actions at facilities as described in the Air Toxics NEI strategy.
PBS-NSR07	NEI: <u>Reducing Air Pollution from the Largest Sources</u> Number of NSR/PSD investigations of coal-fired electric utilities.
PBS-NSR08	NEI: <u>Reducing Air Pollution from the Largest Sources</u> Number of completion reports or referrals to DOJ for coal-fired electric utilities.
PBS-M105	NEI: <u>Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters</u> Number of Phase 1 municipal separate storm sewer system permit assessments conducted.
PBS-M106	NEI: <u>Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters</u> Number of civil judicial referrals and/or addressing actions for sanitary sewer systems (SSS) with total treatment capacity ≥10 mgd. Optional - Number of civil judicial referrals and/or addressing actions for SSSs < 10 MGD.

ACS Code	Measure Text
PBS-M107	<p>NEI: <i>Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters</i> Number of civil judicial referrals and /or addressing actions for CSS communities serving populations $\geq 50,000$.</p> <p>Optional - Number of civil judicial referrals and/or addressing actions for CSS communities serving populations $< 50,000$.</p>
PBS-M108	<p>NEI: <i>Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters</i> Number of civil judicial referrals and/or addressing actions for Phase I and II MS4s.</p> <p>Optional - Number civil judicial referrals and/or addressing actions for Phase II MS4s.</p>
PBS-CAF002	<p>NEI: <i>Preventing Animal Waste from Contaminating Surface and Ground Waters</i> Number of federal AFO/CAFO inspections.</p>
PBS-EE01	<p>NEI: <i>Assuring Energy Extraction Sector Compliance with Environmental Laws</i> Number of compliance evaluations/inspections conducted in the air and water programs at land-based natural gas extraction and production facilities (e.g., wells, compressor stations, gas plants), and at disposal sites (e.g., injection wells, lagoons, ponds, land application). Land impacts and inspections conducted under other media programs may be included per discussion and agreement with the EEPI Strategy Implementation Team.</p>
PBS-EE03	<p>NEI: <i>Assuring Energy Extraction Sector Compliance with Environmental Laws</i> Number of land-based natural gas extraction and production addressing actions.</p>
SDWA02	<p>During FY 2018, the primacy agency must address with a formal enforcement action or return to compliance the number of priority systems equal to the number of its PWSs that have a score of 11 or higher on the July 2017 ETT report. State, territory and tribal breakouts shall be indicated in the comment field of the Annual Commitment System.</p> <p>Please note: A primacy agency's success at addressing violations will be tracked by means of the quarterly ETT reports. Numerical targets may be adjusted at mid-year. While it remains the ERP's goal that all of a priority system's violations will be returned to compliance, a primacy agency has met its commitment under the FY 2018 SDWA ACS measures with respect to a priority system if the score for that system has been brought below, and remains below, 11.</p>

ACS Code	Measure Text
CWA07	<p>By December 31, provide to OECA a specific NPDES Compliance Monitoring Strategy (CMS) plan for the current year for each authorized state in the region and a regional plan wherever EPA direct implementation occurs (e.g., non-authorized states, territories, Indian country, pretreatment, etc.). Each CMS plan should be developed in accordance with the guidelines in Part 1 of the 2014 revised NPDES CMS. Any proposed alternative CMS plan should be provided to OECA for consultation and review by August 15, unless the region and OECA agree upon a later date.</p> <p>By December 31, provide for each state and EPA direct implementation area, a numerical end of year report on EPA and state CMS plan outputs from the prior year, by category and subcategory, corresponding to each of the planned CMS activities.</p> <p>The ACS commitment for each region should reflect the total number of state and regional CMS plans and end of year reports to be submitted to OECA for the year (e.g., an annual ACS commitment of 12 for a region that will submit six state and regional CMS plans and six state and regional CMS end-of-year reports).</p>
CAA04	<p>The number of compliance evaluations to be conducted by the regions at major sources, 80% synthetic minors, and other sources (as appropriate). [Note: Region should break out evaluation projections by source classification and by compliance monitoring category (FCE, PCE, and Investigations). For the total number of evaluations to be conducted, the region should also identify how many of these evaluations are conducted at sources in Indian country for which the Region has Direct Implementation responsibilities.] Projected evaluations under this commitment are those evaluations initiated by the regions for the air enforcement program outside of the National Enforcement Initiatives, and identified by the air program (e.g., MACT, NSPS).</p>
CAA06	<p>Ensure that delegated state, tribal and local government agencies implement their compliance and enforcement programs in accordance with the CAA CMS and have negotiated facility-specific CMS plans in place. The regions are to provide the number of FCEs at majors and 80% synthetic minors to be conducted by individual state/tribal local government agencies to demonstrate program implementation consistent with CMS. However, if a delegated agency negotiates with a Region an alternative CMS plan or alternative activities (pursuant to the CAA CMS national dialogue), this commitment should reflect the alternative plan. [Note: Break out evaluation and activity projections (e.g., FCEs; PCEs included in alternative plan) by source classification. Please indicate when a commitment is pursuant to an approved alternative plan.] Prior to approving an alternative plan, regions should consult with the Office of Compliance (OC) and provide OC with information on how the state, tribal or local government agency compliance monitoring air resources will be redirected and the rationale for making the change.</p>

ACS Code	Measure Text
RCRA01	<p>Project by state, and Indian Country where applicable, the number of operating non-governmental TSDFs to be inspected by the region during the year.</p> <p>Note: Regions must commit to inspect at least two (2) TSDFs in each state or Indian country assuming the universe supports it or unless OECA approves a deviation from this requirement. In order to ensure the annual federal facility inspection requirement of the statute is met, the region should coordinate with the states to identify who will inspect which federal facility. The onsite inspections for RCRA01 should generally be comprehensive evaluation inspections (CEIs) or one of the alternatives described in OECA's compliance monitoring strategy. Financial responsibility is an important component of the RCRA core program and evaluating compliance with 40 CFR Parts 264/265 Subpart H and corrective action financial responsibility should be included in the RCRA core program inspections. The Region or state must conduct at least as many financial record reviews compared to the annual commitment of CEIs. For example, the same number of financial record reviews as CEIs within a fiscal year. Once a region exceeds the ACS CEI annual commitment, additional financial record reviews are optional.</p>
RCRA01.s	<p>Project by state the number of operating TSDFs to be inspected by the state during the federal fiscal year.</p> <p>Note: Only one inspection per facility counts towards this coverage measure. The RCRA CMS establishes minimum annual inspection expectations for TSDFs. In order to ensure the inspection requirement of the statute is met, at least 50 percent of the operating non-governmental TSDFs in the state must be inspected annually. The region should work with the states to identify which federal facilities will be inspected by the region versus the state. The onsite inspections for RCRA01.s should generally be comprehensive evaluation inspections (CEIs) or one of the alternatives described in OECA's compliance monitoring strategy. Financial responsibility is an important component of the RCRA core program and evaluating compliance with 40 CFR Parts 264/265 Subpart H and corrective action financial responsibility should be included in the RCRA core program inspections. The Region or state must conduct at least as many financial record reviews compared to the annual commitment of CEIs. For example, the same number of financial record reviews as CEIs within a fiscal year. Once a region exceeds the ACS CEI annual commitment, additional financial record reviews are optional.</p>
RCRA02	<p>Project by state and Indian country, the number of LQGs, including those at federal facilities, to be inspected by the region during the fiscal year.</p> <p>Note: Each region must commit to inspect at least six (6) LQGs in each state, and 20% of the region's LQG universe in Indian country, unless OECA approves a deviation from this requirement. As part of the annual commitment system process provide the number of federal facility LQG inspections.</p>
RCRA02.s	<p>Project by state the number of LQGs to be inspected by the state during the federal fiscal year. At least 20% of the LQG universe should be covered by combined federal and state inspections unless an alternative plan is approved under the RCRA CMS. As part of the annual commitment system process Regions need to provide a breakout by state for the number of LQG inspections.</p>
RCRA03	<p>In order to ensure the annual inspection requirement of the statute is met, Regions should inspect each operating TSDF operated by states, tribal, or local governments.</p>

ACS Code	Measure Text
TSCA 01OC	Project the total number of FY 2018 TSCA inspections. Note: In the comment field of the Annual Commitment System (ACS), the region should provide a breakout of the number of projected inspections by program area (LBP, PCBs, Asbestos, New and Existing Chemicals).
FIFRA-FED1	Project regional (federal) FIFRA inspections. Each region should conduct a minimum of ten (10) FIFRA inspections.
EJ01	Percentage of non-exempt cases brought by the EPA in areas determined by the EPA to have potential EJ concerns. [Note: While we are tracking this measure, there is no specific target number or trend we expect to achieve. EJ is one of many factors the Agency considers in bringing an enforcement action.]

New/Revised Measures

ACS Code	Measure Text
PBS-RCRAAIR01	<i>NEI: Reducing Air Emissions of Hazardous Wastes from RCRA Regulated Facilities</i> Number of RCRA hazardous waste inspections of facilities on the RCRA-Air NEI target list. Note: The expectation for regions is that 20% of their total annual ACS commitments from RCRA01 and RCRA02 will support the RCRA-Air NEI.
PBS-ID01	<i>NEI: Keeping Industrial Pollutants Out of the Nation's Waters</i> Number of NPDES inspections at high priority facilities identified for compliance assessments under the Industrial Dischargers NEI.
PBS-ID02	<i>NEI: Keeping Industrial Pollutants Out of the Nation's Waters</i> Number of NPDES addressing actions at high priority facilities identified under the Industrial Dischargers NEI.
PBS-CAF007	<i>NEI: Preventing Animal Waste from Contaminating Surface and Ground Waters</i> Submit 1 report at mid-year. This report will describe efforts to advance technologies that address excess nutrients at CAFOs.
PBS-CAF008	<i>NEI: Preventing Animal Waste from Contaminating Surface and Ground Waters</i> Submit 1 progress report per federal fiscal year. This report will include a section that provides an EOY update on any work reported under CAF007.

ACS Code	Measure Text
SRF01	<p>By FY 2018 (September 30, 2018), complete draft reports for all Round 4 SRF reviews scheduled for calendar year 2018. (Final reports are to be completed by December 31, 2018 (first quarter of FY 2019).)</p> <p>Note: Regions in FY 2017 developed a plan to complete all Round 4 state reviews within five years, that is, by the end of calendar year 2022. OC will hold annual discussions with regions to establish whether any modifications to the schedules are necessary. For Round 3, Regions are to finalize all Round 3 SRF reports for state CAA, CWA and RCRA enforcement programs scheduled for calendar year 2017 no later than December 31, 2017 (first quarter of FY 2018).</p>
FED-FAC05	<p><u>Conduct single or multimedia federal facility inspections in order to ensure a national enforcement and compliance presence in the federal facilities sector.</u></p> <p>Note: As provided in the National Federal Facilities Compliance & Enforcement FY 2018 Program Agenda, regions will conduct 10 federal facility inspections and will be afforded flexibility in meeting some of the commitments by undertaking other compliance assurance activities, including compliance assistance. As available, resources (regional inspector travel funds, contract inspector access, and case support) will be provided.</p>
TSCA 02OC	<p>Report other compliance monitoring activities at the end of the year; and break-out the description of other such activities by TSCA program area. <u>Such activities may include:</u></p> <p><u>On-site activities may include compliance activities that will help assess compliance of the facility as a whole. The on-site evaluation may include any of the following activities:</u></p> <ul style="list-style-type: none"> • <u>Review regulated activities.</u> • <u>Review required reports, records or other relevant documents.</u> <p><u>Off-site activities may include compliance evaluations designed to assess compliance of the facility. The off-site evaluation activities may include any of the following activities:</u></p> <ul style="list-style-type: none"> • <u>Review or audit reports, records or other relevant documents.</u> • <u>Evaluate responses to formal information requests, i.e., IRLs.</u> • <u>Assess or triage tips and complaints that enable a closeout of a complaint.</u>
EPCRA 01	Conduct at least four (4) EPCRA 313 data quality inspections (and/or off-site record reviews).
EPCRA 02	Conduct at least twenty (20) EPCRA 313 non-reporter inspections (and/or off-site record reviews).

Discontinued Measures

ACS Code	Measure Text
<u>FIFRA-FED 2</u>	For EPA regions with direct implementation responsibilities in Indian country and states without primacy, project the number of regional (federal) FIFRA inspections focused on the Worker Protection Standard (WPS).
OSRE-01	Reach a settlement or take an enforcement action by the start of remedial action at 99% of non-federal Superfund sites that have viable, liable parties.
OSRE-02	Address all unaddressed costs in Statute of Limitations cases for sites with total past Superfund costs equal to or greater than \$500,000 in value via settlement, referral to DOJ, filing a claim in bankruptcy, or where appropriate write-off.
HQ-VOL	<p>Volume of Contaminated Media Addressed (VCMA). As part of the Goal 5 sub-objective, Support Cleaning up Our Communities, the following is the GPRA target: In 2018, obtain commitments to clean up 140 million cubic yards of contaminated soil and groundwater media as a result of concluded CERCLA and RCRA corrective action enforcement actions.</p> <p>OECA has reported VCMA for contaminated soil and groundwater media as separate measures in its annual results since 2004. The GPRA target is a national target and regions are not required to post commitments in ACS.</p>

Appendix B: Grants Guidance

Fiscal Year 2018-2021 FIFRA Cooperative Agreement Guidance

The purpose of this guidance is to identify pesticide program and compliance and enforcement program areas that must be addressed in state and tribal cooperative agreements and to provide information on work plan generation, reporting and other requirements.

- [FY 2018-2021 FIFRA Cooperative Agreement Guidance \(PDF\)](#)

TSCA Substances Compliance Monitoring Grant Guidance for Fiscal Year 2018

EPA's Office of Enforcement and Compliance Assurance (OECA), Office of Compliance (OC) developed this Guidance for use by EPA regional offices in negotiating and managing state and tribal grants under the Toxic Substances Control Act (TSCA) to conduct compliance assurance and enforcement activities.

- [TSCA Substances Compliance Monitoring Grant Guidance for Fiscal Year 2018 \(PDF\)](#)

Appendix C: Point of Contact for More Information

Contact Name	Subject Area	Phone	Email
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Greg Sullivan	NEI: <i>Reducing Risks of Accidental Releases at Industrial and Chemical Facilities</i>	202-564-1298	sullivan.greg@epa.gov
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Greg Sullivan	EPCRA 304, 311/312 and CERCLA 103	202-564-1298	sullivan.greg@epa.gov

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Jonathan Binder	OECA Indian Country and Tribal Government Issues	202-564-2516	binder.jonathan@epa.gov
Fran Jonesi	OECA Indian Country and Tribal Government Issues	202-564-7043	jonesi.fran@epa.gov
Michele McKeever	OECA National Program Manager (NPM) Guidance Coordination	202-564-3688	mckeever.michele@epa.gov
Kim Chavez	OECA National Program Manager (NPM) Guidance Coordination	202-564-4298	chavez.kimberly@epa.gov

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Fri 9/29/2017 6:21:45 PM
Subject: FW: NAA Request for Merck Las Piedras permit
Merck Las Piedras EPA 9-29-17.pdf

Another NAA coming

From: Holmes, Carol
Sent: Friday, September 29, 2017 1:53 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Mosher, Eric <Mosher.Eric@epa.gov>; Froikin, Sara <Froikin.Sara@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; King, Carol <King.Carol@epa.gov>
Subject: NAA Request for Merck Las Piedras permit

Hello Larry – We received the attached incoming request from Merck for an NAA to allow them to operate their emergency generators at their facility in Las Piedras, PR, beyond applicable permit limits regarding fuel consumption and hours of operation. Although Merck initially plans to use the power from the generators to initiate recovery efforts at the facility (e.g., maintain security of chemicals and waste stored at the site), the company intends to contact local officials to explore the possibility of assisting with relief efforts by providing some power and/or water to the local community (Merck has onsite wells).

Ex. 5 - Attorney Client

any questions. Thank you, Carol

May contain sensitive communication for internal deliberations only, attorney-client communication, attorney work product, and/or enforcement sensitive information. Do not distribute outside the U.S. Government.

Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff

Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW

Washington, DC 20460
Phone (202) 564-8709

September 29, 2017

Via E-Mail Only

Sara Froikin, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

Gregory T. Fried, Esq.
Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington DC 20460

Re: Emergency Authorization
Las Piedras, Puerto Rico

Dear Ms. Froikin and Mr. Fried:

We represent Merck, Sharp & Dohme Corp. (Merck) in connection with the pharmaceutical production facility located at State Road 183, PRIDCO Industrial Park, Las Piedras, Puerto Rico. The facility was formerly known as Schering-Plough Products, LLC. The facility holds one or more permits authorizing air emissions, including a permit or permit(s) now or formerly designated as number PFE-TV-2834-44-0197-0002 issued by the Puerto Rico Environmental Quality Board pursuant to the Puerto Rico Title V Operating Permit Program.

As discussed, like the entire island, this facility has been adversely impacted by recent hurricanes. Merck intends to use the emissions sources at this facility, including the on-site emergency electric generators (now or formerly identified in the permit as EPGEN1, EPGEN2, EPGEN3 and EPGEN4) in order to:

- Initiate plant recovery activities including activating and stabilizing the on-site wastewater collection, pretreatment and treatment systems;
- Restore power and lights and provide a secure work environment for personnel;
- Maintain the stability and security of chemicals and wastes stored on site;

ARNOLD & PORTER I KAYE SCHOLER

Sara Froikin, Esq.
Gregory T. Fried, Esq.
September 29, 2017
Page 2

- Maintain the stability and security and cleanliness of production equipment and air and water pollution control devices and otherwise restore production capabilities, and
- Maintain on site wells and associated water purification systems.

Depending upon local conditions and availability, Merck also intends to contact local authorities to explore the possibility of assisting with relief efforts by providing some power and/or water to the local community.

The permit specifies, among other things, a maximum fuel consumption limit on a 365-day rolling basis as well as a separate limit on total number of operating hours. Given the extensive damage to the electric grid, the duration of the current emergency conditions in Puerto Rico is highly uncertain. Moreover, at this time Merck has no reliable information concerning plant operations over the past 365 days. Considering the demands for electricity at the facility, and the needs of the local community, these generators may be called upon to operate at maximum capacity for an extended period which could potentially exceed applicable permit limits. Accordingly, we are seeking confirmation from the agencies that for the duration of the emergency conditions in Puerto Rico, Merck can be relieved of these operating limits.

Merck is presently evaluating local fuel supplies. Depending upon what we learn about sulfur content we may need to discuss this issue with you. In addition, we reserve the right to seek further relief once we have had a reasonable opportunity to consult with local authorities and the plant operators and better understand local conditions.

Of course, under these circumstances, Merck is not waiving, but rather specifically reserving, all rights, claims and defenses that would be available, including without limitation the right to claim force majeure, emergency, system upset or malfunction.

Please let me know if you have any comments or concerns.

Very truly yours,



Edward F. McTiernan

To: Ferguson, Lincoln[ferguson.lincoln@epa.gov]
Cc: Kenneth Wagner (wagner.kenneth@epa.gov)[wagner.kenneth@epa.gov]; Forsgren, Lee[Forsgren.Lee@epa.gov]; Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]; Letendre, Daisy[letendre.daisy@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]
From: Bodine, Susan
Sent: Mon 10/23/2017 7:26:31 PM
Subject: RE: Briefing paper for NAHB meeting on Tuesday 10-24
[Agenda - October 24th Enforcement and Compliance Fourm.pdf](#)
[NAHB Issues - October 24th Enforcement and Compliance Forum.pdf](#)

Also attached is the agenda and background paper prepared by NAHB.

From: Bodine, Susan
Sent: Monday, October 23, 2017 8:46 AM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Kenneth Wagner (wagner.kenneth@epa.gov) <wagner.kenneth@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Patrick Traylor (traylor.patrick@epa.gov) <traylor.patrick@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: Briefing paper for NAHB meeting on Tuesday 10-24

Lincoln, attached is a background briefing paper for tomorrow's meeting with NAHB in the Alm room.



**Construction Stormwater Enforcement & Compliance:
Working with Regulated Stakeholders to Achieve Results**

**U.S. Environmental Protection Agency, Washington D.C.
Tuesday, October 24, 2017
10:00 a.m. – 12:00 p.m.**

Attendees:

EPA Office of Enforcement and Compliance Assurance (OECA) and Office of Water (OW) senior staff, Regional OECA officials, program staff

National Association of Home Builders (NAHB) members from each EPA region, NAHB staff

Objective:

NAHB members will identify top enforcement issues that generate uncertainty, redundancy, and increased costs in the field.

Participants will discuss opportunities to improve compliance and clarify state/federal enforcement roles so that all stakeholders understand responsibilities and are better equipped to meet compliance goals.

AGENDA

- I. Welcome** – Susan Bodine, EPA; Greg Ugalde, NAHB Second Vice Chairman of the Board
- II. Introductions**
- III. Key Enforcement Issues** – NAHB Members
 - ☐ Overly burdensome requirements for small sites
 - ☐ Limited opportunity to correct minor violations in the field
 - ☐ Overlap of state and federal authority
 - ☐ Confusion over enforceability of SWPPP details
- IV. Potential Solutions**
- V. Next Steps**

Issues Backgrounder

Construction Stormwater Enforcement & Compliance Forum

U.S. EPA, Washington D.C.
Tuesday, October 24, 2017
10:00 a.m. – 12:00 p.m.

Overly burdensome requirements for small sites

EPA's current 300-plus page Construction General Permit (CGP) contains identical requirements for all sites, regardless of site size or risk. The level of detail and work needed to develop and implement Storm Water Pollution Prevention Plans or SWPPPs under this permit is often overwhelming, complicated, and confusing for small operators. NAHB previously worked with EPA to develop a simplified compliance template for single family homes within large subdivisions. We believe this template could fairly easily be turned into a streamlined permit option. Because a small lot permit will be concise, easier to understand, and better specify permit requirements, it will foster higher rates of compliance among these low-risk sites.

Limited opportunity to correct minor violations in the field

NAHB believes a missed opportunity exists during EPA's stormwater inspection process to educate and provide assistance to operators trying to comply in good faith. Rather than assessing monetary penalties for every infraction, EPA inspectors could identify minor infractions to be corrected immediately or within a specific period of time without threat of further enforcement; provided those violations do not result in environmental harm. This "*right to cure*" protection for first time violators would remove the fear factor associated with those trying to comply in good faith.

Overlap of state and federal authority

NAHB has long advocated for better coordination between state and federal partners when it comes to stormwater enforcement and compliance assistance. Members report that visits from multiple levels of government to the same site can result in very different observations and citations. As EPA seeks to restore the balance between compliance assurance and enforcement obligations, NAHB believes states, not EPA should play the lead role in targeting and initiating enforcement activities.

Enforceability of Stormwater Pollution Prevention Plans (SWPPPs)

In February 2017, EPA's most recent Construction General Permit clarified that on-site compliance plans or SWPPPs are a "flexible, external tool" for carrying out permit responsibilities. However, builders continue to report that they are being cited for minor differences between their compliance plans and actual site practices and conditions. A formal EPA policy clarifying that individual details of on-site compliance plans do not create or equate to permit limits could put an end to these incidents.

To: Ferguson, Lincoln[ferguson.lincoln@epa.gov]
Cc: Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Tue 11/28/2017 11:36:40 PM
Subject: OECA weekly
OECA Weekly Briefing (November 29 2017).docx

Attached is a background memo. Sorry I failed to get this to you earlier. It is an update of last week's memo since we did not get to most of the items.

To: Bailey, Ethel[Bailey.Ethel@epa.gov]; Rowena Benitez-Clark (Benitez-Clark.Rowena@epa.gov)[Benitez-Clark.Rowena@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]; Miles, Erin[Miles.Erin@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]
From: Bodine, Susan
Sent: Wed 10/11/2017 12:42:31 PM
Subject: NTOC

I plan to be at NTOC from 9-10. In the Green Room

File As: Gunasekara, Amanda
E-mail: gunasekara.amanda@epa.gov
Display As (E-mail): Gunasekara, Amanda
Business Telephone Number: (202) 564-2314
First: Amanda
Family: Gunasekara

To: Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Tue 12/5/2017 10:00:11 PM
Subject: FW: FYI

From: Ferguson, Lincoln
Sent: Tuesday, December 5, 2017 4:53 PM
To: Kelly, Albert <kelly.albert@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: FYI

http://www.tulsaworld.com/news/state/oil-producers-set-to-pump-bird-creek-amid-epa-s/article_3f830c62-3243-5648-bcda-1ebfc726d73f.html

Lincoln Ferguson

Senior Advisor to the Administrator

U.S. EPA

(202) 564-1935

To: Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Thur 11/2/2017 9:30:02 PM
Subject: FW: IO Staff Meeting Materials for Monday, November 6, 2017
[IO Staff Meeting for 11 6 17.pdf](#)

I misread this – I thought it said no weekly – it says no regulatory activity

From: Shiffman, Cari
Sent: Thursday, November 2, 2017 4:20 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Bailey, Ethel <Bailey.Ethel@epa.gov>; Benitez-Clark, Rowena <benitez-clark.rowena@epa.gov>; Senn, John <Senn.John@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Cc: Miles, Erin <Miles.Erin@epa.gov>
Subject: IO Staff Meeting Materials for Monday, November 6, 2017

Please find the IO Staff Meeting Materials for next Monday. Please note that there is no OECA Regulatory Activity Weekly Report this week.

Thanks,

Cari Shiffman, Special Assistant

U.S. Environmental Protection Agency

Office of Enforcement and Compliance Assurance

Office: (202) 564-2898 | Mobile: (202) 823-3277

To: Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]
Cc: Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]
From: Bodine, Susan
Sent: Tue 11/28/2017 2:14:45 PM
Subject: FW: November 26 - Update on TransCanada "Ludden +17" Spill

See below. **Ex. 5 - Deliberative Process**?

-----Original Message-----

From: Ostrander, David
Sent: Monday, November 27, 2017 3:50 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Smidinger, Betsy <Smidinger.Betsy@epa.gov>
Cc: Dhieux, Joyel <Dhieux.Joyel@epa.gov>
Subject: FW: November 26 - Update on TransCanada "Ludden +17" Spill

Susan,

Transcanada is removing free oil and soils at this time. The soils are being staged for disposal on a lined and bermed pad in accordance with state regulations. They will segregate the more saturated soils (i.e. the area around the rupture) from the less impacted soils (i.e. area lightly sprayed). Soils (and most waste streams) will be sampled and characterized prior to disposal. They are still a few weeks from disposal, thus no soil samples for disposal have been collected at this point. Transcanada intends to test the soils for hazardous waste characteristics and manage them appropriately as solid or hazardous wastes. According to Transcanada, these wastes are not exempt E&P wastes.

Thanks, and let us know if you have any other questions.

> **From:** Bodine, Susan
> **Sent:** Monday, November 27, 2017 8:09 AM
> **To:** Ostrander, David <Ostrander.David@epa.gov>
> **Cc:** Benevento, Douglas <benevento.douglas@epa.gov>; Traylor, Patrick
> <traylor.patrick@epa.gov>
> **Subject:** FW: November 26 - Update on TransCanada "Ludden +17" Spill
>
> See question below – got an out of office reply from Betsy.
>
>
> **From:** Bodine, Susan
> **Sent:** Monday, November 27, 2017 10:03 AM
> **To:** Smidinger, Betsy
> <Smidinger.Betsy@epa.gov<mailto:Smidinger.Betsy@epa.gov>>
> **Cc:** Benevento, Douglas
> <benevento.douglas@epa.gov<mailto:benevento.douglas@epa.gov>>; Patrick
> Traylor (traylor.patrick@epa.gov<mailto:traylor.patrick@epa.gov>)
> <traylor.patrick@epa.gov<mailto:traylor.patrick@epa.gov>>
> **Subject:** FW: November 26 - Update on TransCanada "Ludden +17" Spill
>
> Betsy,

Ex. 5 - Deliberative Process

>
> Thanks,
>
> Susan
>
>
> From: Traylor, Patrick
> Sent: Monday, November 27, 2017 7:54 AM
> To: Jackson, Ryan <jackson.ryan@epa.gov<mailto:jackson.ryan@epa.gov>>;
> Bodine, Susan <bodine.susan@epa.gov<mailto:bodine.susan@epa.gov>>;
> Bowman, Liz <Bowman.Liz@epa.gov<mailto:Bowman.Liz@epa.gov>>; Ferguson,
> Lincoln <ferguson.lincoln@epa.gov<mailto:ferguson.lincoln@epa.gov>>
> Subject: Fwd: November 26 - Update on TransCanada "Ludden +17" Spill
>
> FYSA
> Patrick Traylor
> Deputy Assistant Administrator
> Office of Enforcement and Compliance Assurance U.S. Environmental
> Protection Agency
> (202) 564-5238 (office)
> (202) 809-8796 (cell)
>
> Begin forwarded message:
> From: "Smidinger, Betsy"
> <Smidinger.Betsy@epa.gov<mailto:Smidinger.Betsy@epa.gov>>
> To: "Benevento, Douglas"
> <benevento.douglas@epa.gov<mailto:benevento.douglas@epa.gov>>, "Thomas, Deb"
> <thomas.debrah@epa.gov<mailto:thomas.debrah@epa.gov>>, "Davis, Patrick"
> <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>>, "Traylor,
> Patrick" <traylor.patrick@epa.gov<mailto:traylor.patrick@epa.gov>>
> Cc: "Mutter, Andrew"
> <mutter.andrew@epa.gov<mailto:mutter.andrew@epa.gov>>, "Ostrander,
> David" <Ostrander.David@epa.gov<mailto:Ostrander.David@epa.gov>>, "Williams, Laura"
> <williams.laura@epa.gov<mailto:williams.laura@epa.gov>>, "Dhieux,
> Joyel" <Dhieux.Joyel@epa.gov<mailto:Dhieux.Joyel@epa.gov>>, "Griswold,
> Hays" <Griswold.Hays@epa.gov<mailto:Griswold.Hays@epa.gov>>
> Subject: Fwd: November 26 - Update on TransCanada "Ludden +17" Spill
> Hi All - Here is Joyel's update for today.
>
> Sent from my iPhone
>
> Betsy Smidinger
> ARA, Ecosystems Protection and Remediation Region 8, US EPA Denver, CO
> (303) 312-6231 (o)
> (303) 335-7627 (c)
>
> Begin forwarded message:
> From: "Dhieux, Joyel"
> <Dhieux.Joyel@epa.gov<mailto:Dhieux.Joyel@epa.gov>>
> To: "Smidinger, Betsy"

> <Smidinger.Betsy@epa.gov<mailto:Smidinger.Betsy@epa.gov>>, "Ostrander,
> David" <Ostrander.David@epa.gov<mailto:Ostrander.David@epa.gov>>,
> "Williams, Laura"
> <williams.laura@epa.gov<mailto:williams.laura@epa.gov>>, "Griswold,
> Hays" <Griswold.Hays@epa.gov<mailto:Griswold.Hays@epa.gov>>
> Subject: November 26 - Update on TransCanada "Ludden +17" Spill
>
> Hi All,
>
>
>
> I've attached the updated Incident Briefing for the TransCanada "Ludden +17" Spill. The pipeline was
successfully drained last night and will removed tonight. The damaged section of pipeline will be sent to
PHMSA for analysis.
>
>
>
> If you have any questions, please let me know. Tomorrow is my last planned day on-site.
>
>
>
> Joyel
>
>
>
>
>
> Joyel Dhieux
>
> Federal On-Scene Coordinator
>
> U.S. EPA Region 8
>
> Tel: 303-312-6647
>
> Cell: 720-441-9961
> <Incident Briefing 11.26.17.docx>
> <20171126 _ICS 209 Incident Status Summary.pdf>

To: Graham, Amy[graham.amy@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]
Cc: Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Wed 10/4/2017 9:40:39 PM
Subject: FW: Colorado Springs summary.docx
Colorado Springs summary.docx

From: Bodine, Susan
Sent: Wednesday, October 4, 2017 12:52 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Patrick Traylor (traylor.patrick@epa.gov) <traylor.patrick@epa.gov>
Subject: Colorado Springs summary.docx

As we discussed

To: Ford, Hayley[ford.hayley@epa.gov]
Cc: Traylor, Patrick[traylor.patrick@epa.gov]; Ferguson, Lincoln[ferguson.lincoln@epa.gov]
From: Bodine, Susan
Sent: Mon 11/20/2017 8:13:04 PM
Subject: Re: Enforcement Meeting Tomorrow

Yes

We have one time sensitive issue

Sent from my iPhone

On Nov 20, 2017, at 3:12 PM, Ford, Hayley <ford.hayley@epa.gov> wrote:

Susan/Patrick,

Do you have enforcement issues that you need to address with him tomorrow? If so, totally fine, but if you think it can wait, I'm anticipating him asking me to condense the schedule tomorrow due to his family in town and know you just met with him a few days ago.

Let me know.

Thanks!

Hayley Ford

Deputy White House Liaison and Personal Aide to the Administrator

Environmental Protection Agency

ford.hayley@epa.gov

Phone: 202-564-2022

Cell: 202-306-1296

To: Patrick Traylor (traylor.patrick@epa.gov)[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Wed 11/15/2017 2:00:14 PM
Subject: FW: s. 203 hearing
EPA technical assistance on RPM Act -September 2017.pdf

From: Horner, Elizabeth (EPW) [mailto:Elizabeth_Horner@epw.senate.gov]
Sent: Wednesday, November 15, 2017 8:54 AM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: s. 203 hearing

Pretty sure it was this one. Need to verify.

From: Bodine, Susan [mailto:bodine.susan@epa.gov]
Sent: Wednesday, November 15, 2017 8:51 AM
To: Horner, Elizabeth (EPW) <Elizabeth_Horner@epw.senate.gov>
Subject: s. 203 hearing

Which TA did Whitehouse enter into the record?

To: Sarah Greenwalt (greenwalt.sarah@epa.gov)[greenwalt.sarah@epa.gov]; Forsgren, Lee[Forsgren.Lee@epa.gov]
From: Bodine, Susan
Sent: Fri 11/17/2017 7:05:00 PM
Subject: FW: Pruitt Back Early

I am available now. Are you back yet Lee?

From: Dravis, Samantha
Sent: Friday, November 17, 2017 1:58 PM
To: Ford, Hayley <ford.hayley@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: Re: Pruitt Back Early

I'm free and hoping to leave early today so earlier is great

Sent from my iPhone

On Nov 17, 2017, at 1:56 PM, Ford, Hayley <ford.hayley@epa.gov> wrote:

Pruitt is back earlier as we moved lunch earlier. He may want to move up some of his briefings. Below is the current schedule. Anyone free earlier than 3? Thanks!

3:00PM ET – 3:30PM **Briefing: Update on Oil and Gas Proposed Rule –** Ex. 5 - Deliberative Process
ET

Location: Administrator's Office

Staff: Bill Wehrum, Samantha Dravis, Justin Schwab, Mandy Gunasekara, Ryan Jackson

3:30PM ET – 4:00PM **Briefing:** Ex. 5 - Deliberative Process
ET

Location: Administrator's Office

Staff: Sarah Greenwalt, Lee Forsgren, Susan Bodine
4:00PM ET – 4:30PM **Briefing:** Ex. 5 - Deliberative Process
ET

Location: Administrator's Office

Staff: Bill Wehrum, Ryan Jackson, Samantha Dravis, Mandy Gunasekara

Hayley Ford

Deputy White House Liaison and Personal Aide to the Administrator

Environmental Protection Agency

ford.hayley@epa.gov

Phone: 202-564-2022

Cell Ex. 6 - Personal Privacy

To: Pollins, Mark[Pollins.Mark@epa.gov]
Cc: Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Traylor, Patrick[traylor.patrick@epa.gov]; Miles, Erin[Miles.Erin@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]; Theis, Joseph[Theis.Joseph@epa.gov]; Denton, Loren[Denton.Loren@epa.gov]
From: Bodine, Susan
Sent: Mon 11/20/2017 7:55:09 PM
Subject: Re: new enforcement guidance?

Thanks

Sent from my iPhone

On Nov 20, 2017, at 2:19 PM, Pollins, Mark <Pollins.Mark@epa.gov> wrote:

Ex. 5 - Attorney Client

Mark

Sent from my iPhone

On Nov 16, 2017, at 10:57 AM, Bodine, Susan <bodine.susan@epa.gov> wrote:

I spoke to Lee. **Ex. 5 - Attorney Client**

Ex. 5 - Attorney Client

So, I think the response to the inevitable NACWA question is:

Ex. 5 - Attorney Client

If you want to, you could also say:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Thoughts?

Ex. 5 - Attorney Client

From: Pollins, Mark

Sent: Thursday, November 16, 2017 9:03 AM

To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Cc: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Miles, Erin <Miles.Erin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>

Subject: Re: new enforcement guidance?

Ex. 5 - Attorney Client

Mark

Sent from my iPhone

On Nov 16, 2017, at 8:51 AM, Kelley, Rosemarie
<Kelley.Rosemarie@epa.gov<<mailto:Kelley.Rosemarie@epa.gov>>> wrote:

Ex. 5 - Attorney Client

Rosemarie

On Nov 16, 2017, at 8:40 AM, Bodine, Susan
<bodine.susan@epa.gov<<mailto:bodine.susan@epa.gov>>> wrote:

Ex. 5 - Attorney Client?

Water Infrastructure

No Fines for Water Utilities Taking Over Failed Systems: EPA

Snapshot

- Water utilities may see fines, enforcement actions dropped after taking over failed systems under EPA initiative
- EPA says the initiative would encourage compliance

By Amena H. Saiyid<<mailto:asaiyid@bna.com>>

Water utilities that take over failing treatment plants to upgrade or maintain infrastructure critical to providing safe water may see enforcement actions and

penalties waived by the federal government, the EPA's top water official said Nov. 15.

“We are going to bend over backwards” to halt enforcement actions if utilities take over and assume responsibility for maintenance and operations for failing systems, Dennis L. Forsgren Jr., deputy assistant administrator for the Environmental Protection Agency's Office of Water, told participants at the National Clean Water Law Seminar in Savannah, Ga. However, the EPA's water and enforcement offices are working out the details of how such a policy would work.

Forsgren said utilities are acting as “good Samaritans” by assuming consent decrees to make the needed infrastructure repairs. In exchange, the EPA would waive their fines “as a way to encourage them,” he added.

“Our goal is to get to a culture of compliance, and not have to use the heavy hand of enforcement,” he said.

The U.S. has more than 800,000 miles of public sewers, and sewers are susceptible to structural failure, blockages, and overflows, according to the American Society of Civil Engineers. An estimated 23,000 to 75,000 sewage overflows occur each year and lead to contamination of waterways with toxic pollution and debris.

The engineers also estimate 240,000 drinking water main breaks occur each year. And many small water systems lack the funds to treat tap water to meet federal standards for arsenic, perchlorate, and lead.

Many utilities of all sizes are under consent decrees or face enforcement actions for failure to reduce overflows from combined sewers that transport both stormwater and wastewater or just sanitary sewer overflows.

‘White Knights’ Rewarded

The EPA's initiative rewards “white knights” who voluntarily step into help failing wastewater and drinking water plants or systems, said Chris Pomeroy, president of Richmond, Va.-based AquaLaw PLC, which specializes in water law issues.

“That concept is exactly right,” Pomeroy told Bloomberg Environment on the sidelines of the law conference. “We should not be in the business of penalizing good actors who might be willing to come to the rescue of failing systems,” not to mention the public health and environmental benefits that would accrue from such a move.

To contact the reporter on this story: Amena H. Saiyid in Washington at asaiyid@bna.com<<mailto:asaiyid@bna.com>>

To contact the editor responsible for this story: Rachael Daigle at rdaigle@bna.com<<mailto:rdaigle@bna.com>>

<CRPT-115hrpt380.pdf>

To: Miles, Erin[Miles.Erin@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]
From: Bodine, Susan
Sent: Fri 9/22/2017 6:32:35 PM
Subject: RE: Annual Enforcement Letter to the States
State letter draft 9.6.17.docx
FY18 Priorities Enclosure for Annual Letter draft to Glenn 9.7 (002).docx

My thoughts

From: Miles, Erin
Sent: Friday, September 22, 2017 12:52 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Annual Enforcement Letter to the States

No, but I can do a redline of the letter, based on what we discussed, and run it by you before sending to Region 4.

From: Starfield, Lawrence
Sent: Friday, September 22, 2017 12:40 PM
To: Miles, Erin <Miles.Erin@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Annual Enforcement Letter to the States

Erin,

Is there a document that captures what we discussed this morning? It would be useful to see that before trying to add any additional issues. Thanks.

Larry

From: Miles, Erin
Sent: Friday, September 22, 2017 11:16 AM

To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: FW: Annual Enforcement Letter to the States

Susan,

The letter to the states that is attached is still the latest version. I talked to Region 4 and we are going to walk through the draft on Monday – they hope to send it out next week after they get a chance to brief their leadership. After they incorporate our comments, I'll have them send us another draft.

I think I captured what we discussed this morning, but please let me know if you have other general comments.

Thanks,

Erin

From: Miles, Erin
Sent: Wednesday, September 20, 2017 2:33 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: FW: Annual Enforcement Letter to the States

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

regions to

Ex. 5 - Deliberative Process

From: Porter, Amy

Sent: Monday, September 18, 2017 2:52 PM

To: Sisario, Kelly <Sisario.Kelly@epa.gov>; Kabler, Lauren <Kabler.Lauren@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; Kadish, Rochele <Kadish.Rochele@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Miles, Erin <Miles.Erin@epa.gov>

Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>

Subject: FW: Annual Enforcement Letter to the States

Adding Erin and Cari for front office review.

Kelly and Scott – can you please give us a target date for response to help manage the process?

Thanks everyone!

Amy

From: Porter, Amy

Sent: Monday, September 18, 2017 12:35 PM

To: Sisario, Kelly <Sisario.Kelly@epa.gov>; Lauren Kabler (<Kabler.Lauren@epa.gov>); Dombrowski, John <Dombrowski.John@epa.gov>; Kadish, Rochele <Kadish.Rochele@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>; Senn, John <Senn.John@epa.gov>

Cc: Rosemarie Kelley (<Kelley.Rosemarie@epa.gov>); Joseph Theis <Theis.Joseph@epa.gov>

Subject: FW: Annual Enforcement Letter to the States

Kelly, Scott –

Thank you for sending the attached materials for vetting. We took a quick look and

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

John Senn. I suspect each office will give you their own comments or concurrence.

Thank you,

Amy

From: Sisario, Kelly
Sent: Thursday, September 14, 2017 2:52 PM
To: Porter, Amy <Porter.Amy@epa.gov>
Cc: Gordon, Scott <Gordon.Scott@epa.gov>
Subject: Annual Enforcement Letter to the States

Amy,

Here is a draft of our letter that we plan to have the RA sign and to send to our States sometime in September. With the hurricane this weekend, he hasn't had a chance to be briefed on it or review it. We have been sending out a similar letter for the last 10 years. I am also attaching a copy of the letter that was sent out last year. Along with the letter is an attachment that outlines national and regional initiatives. Let us know what you think as far as vetting goes.

Thanks,

Kelly

Cc: Forsgren, Lee[Forsgren.Lee@epa.gov]
To: Bowman, Liz[Bowman.Liz@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Traylor, Patrick[traylor.patrick@epa.gov]
From: Bodine, Susan
Sent: Wed 10/25/2017 7:12:41 PM
Subject: Fwd: PADEP Orders PWSA to Make Critical Infrastructure Upgrades to Ensure Adequate Drinking Water Supplies
[201710251330.pdf](#)
[ATT00001.htm](#)

Relevant to this afternoon's Pittsburgh meeting with SP
Sent from my iPad

Begin forwarded message:

From: "Theis, Joseph" <Theis.Joseph@epa.gov>
Date: October 25, 2017 at 3:09:43 PM EDT
To: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>
Cc: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Pollins, Mark" <Pollins.Mark@epa.gov>, "Denton, Loren" <Denton.Loren@epa.gov>, "Bahk, Benjamin" <Bahk.Benjamin@epa.gov>, "Rog, Morgan" <Rog.Morgan@epa.gov>
Subject: Fwd: PADEP Orders PWSA to Make Critical Infrastructure Upgrades to Ensure Adequate Drinking Water Supplies

FYI

Sent from my iPhone

Begin forwarded message:

From: "King, Carol" <King.Carol@epa.gov>
To: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Theis, Joseph" <Theis.Joseph@epa.gov>, "Denton, Loren" <Denton.Loren@epa.gov>, "Pollins, Mark" <Pollins.Mark@epa.gov>
Cc: "Rog, Morgan" <Rog.Morgan@epa.gov>, "Bendik, Kaitlyn" <bendik.kaitlyn@epa.gov>
Subject: FW: PADEP Orders PWSA to Make Critical Infrastructure Upgrades to Ensure Adequate Drinking Water Supplies

FYI --- PADEP issued an order against PWSA and the City of Pittsburgh today, as planned. A copy is attached. Below is the press release.

From: Rivera, Nina

Sent: Wednesday, October 25, 2017 3:03 PM

To: Donahue, Lisa <Donahue.Lisa@epa.gov>; King, Carol <King.Carol@epa.gov>;
rogers, rick <rogers.rick@epa.gov>; Lopez-Carbo, Maria <Lopez-Carbo.Maria@epa.gov>

Subject: FW: TEST: DEP Orders PWSA to Make Critical Infrastructure Upgrades to Ensure Adequate Drinking Water Supplies

It's online already.

From: schaffer, joan

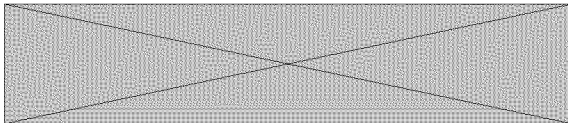
Sent: Wednesday, October 25, 2017 3:00 PM

To: Servidio, Cosmo <Servidio.Cosmo@epa.gov>; Rodrigues, Cecil
<rodrigues.cecil@epa.gov>; D'Andrea, Michael
<DANDREA.MICHAEL@EPA.GOV>; Sternberg, David
<Sternberg.David@epa.gov>; White, Terri-A <White.Terri-A@epa.gov>; Miller,
Linda <miller.linda@epa.gov>; Brown, Kinshasa <Brown.Kinshasa@epa.gov>;
Lueckenhoff, Dominique <Lueckenhoff.Dominique@epa.gov>; Rivera, Nina
<Rivera.Nina@epa.gov>; damm, thomas <Damm.Thomas@epa.gov>; Crumlish,
Karen <Crumlish.Karen@epa.gov>; McManus, Catharine
<mcmanus.catharine@epa.gov>; rogers, rick <rogers.rick@epa.gov>; Smith, William
(Region 3) <smith.william@epa.gov>; Searfoss, Renee <searfoss.renee@epa.gov>;
Lewis, Jacqueline <Lewis.Jacqueline@epa.gov>; Seneca, Roy
<Seneca.Roy@epa.gov>

Subject: FW: TEST: DEP Orders PWSA to Make Critical Infrastructure Upgrades to Ensure Adequate Drinking Water Supplies

PADEP will distribute this release momentarily – FYI

joan



FOR IMMEDIATE RELEASE

October 25, 2017

DEP Orders PWSA to Make Critical Infrastructure Upgrades to Ensure Adequate Drinking Water Supplies

Pittsburgh, PA – The Pennsylvania Department of Environmental Protection (DEP) today issued an Administrative Order requiring the Pittsburgh Water and Sewer Authority (PWSA) to make critical infrastructure upgrades and repairs to its public drinking water system specifically to ensure adequate pressure and volume within the system.

This order requires no action on the part of PWSA customers. Residents should continue to use water as they normally would. The Department's order pertains to improvements to infrastructure; there is no boil water advisory in effect.

"DEP's Safe Drinking Water program staff have devoted significant resources to specifically addressing PWSA's drinking water issues," said DEP Secretary Patrick McDonnell. "DEP is committed to providing necessary oversight of the commonwealth's 8,500 public water systems, including PWSA."

DEP has issued an Administrative Order to require PWSA to take specific corrective actions on a schedule prescribed by DEP. Today's order targets the water system's ability to provide a continuous supply of safe and potable water to consumers, and pertains to pressure and volume, not an imminent threat from contaminants. The order has been issued to PWSA, the lessee and operator, and to the City of Pittsburgh, which owns the water system.

In its Administrative Order, DEP requires the following and other actions from PWSA:

- Restore the Lanpher Reservoir to service by completing repairs to the cover of the east cell of the reservoir initially, and ultimately the replacement of the covers and liners of both the east and west cells;
- Resume operation of the Highland 1 Reservoir, which would require **either** the addition of an ultraviolet disinfection unit and other upgrades to the Highland Membrane Filtration Plant **or** the covering of the Highland 1 Reservoir, which would negate the need for operation of the Membrane Filtration Plant;
- Ensure reliability of the Bruecken Pump Station by installing a backup pump and emergency backup power supply; and
- Take necessary actions to assure that water at adequate pressure is continuously supplied to users.

PWSA has cooperated with DEP's investigations and requests for documents,

and DEP expects that PWSA will continue to comply with DEP oversight.

“We have and will continue to provide technical guidance and clearly communicate compliance requirements to PWSA and process permits quickly and thoroughly,” said DEP Acting Southwest Regional Director Ron Schwartz. “We are all working toward the same goal of continuing to provide safe drinking water to residents, and this order provides a plan moving forward.”

Previously, DEP identified significant deficiencies and violations at PWSA, which resulted in enforcement actions and field orders that led to two Tier 1 boil water advisories in January and August 2017. Following the incidents, DEP conducted investigations of PWSA’s system.

DEP has requested the assistance of the U.S. Environmental Protection Agency (EPA) to perform a comprehensive performance evaluation of PWSA’s distribution system, which EPA has agreed to do.

For more information, including the [Administrative Order](#), visit DEP’s Southwest Region page [here](#).

MEDIA CONTACT: Lauren Fraley, 412-442-4203

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